United Nations International Meeting on the Convening of the Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem

Cairo, 14 and 15 June 1999

United Nations, New York

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I. INTRODUCTION

Objectives of the International Meeting

The United Nations International Meeting on the Convening of the Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem, was organized under the auspices of the Committee on the Exercise of the Inalienable Rights of the Palestinian People and was held in Cairo on 14 and 15 June 1999.

The General Assembly, in its resolution ES-10/6, adopted on 9 February 1999 at its tenth emergency special session, reiterated its recommendation that the High Contracting Parties to the Fourth Geneva Convention convene the conference and recommended further to hold it on 15 July 1999 at the United Nations Office at Geneva. Attaching utmost importance to the implementation of the resolution, the Committee convened the Meeting in Cairo in an effort to provide an opportunity for Governments, intergovernmental and non-governmental organizations and international experts on the subject to discuss the various aspects of the Fourth Geneva Convention and its enforcement in the Occupied Palestinian Territory, including Jerusalem, as well as the Conference of the High Contracting Parties.

Organization of the International Meeting

The International Meeting was attended by representatives of 100 Governments, Palestine, 5 intergovernmental organizations, 11 United Nations bodies and agencies, as well as representatives of 42 non-governmental organizations. The Committee delegation was comprised of H.E. Mr. Ibra Deguène Ka (Senegal), Chairman of the Committee and Chairman of the Meeting; H.E. Dr. Ravan A.G. Farhâdi (Afghanistan), Vice-Chairman of the Committee, who acted as Vice-Chairman of the Meeting; H.E. Mr. George Saliba (Malta), Rapporteur of the Committee and Rapporteur of the Meeting, H.E. Mr. Moctar Ouane (Mali), who also acted as Vice-Chairman; and H.E. Mr. Nasser M. Al-Kidwa (Palestine).

At the opening session held in the morning of 14 June, statements were made by H.E. Mr. Sayd El-Masry, Assistant Foreign Minister for Multilateral Affairs of the Arab Republic of Egypt; Mr. Chinmaya R.Gharekhan, Under-Secretary-General, United Nations Special Coordinator in the Occupied Territories, representative of the Secretary-General; H.E. Mr. Ibra Deguène Ka, Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, and H.E. Mr. Nabil Shaath, Minister for Planning and International Cooperation of the Palestinian Authority.

The International Meeting continued with three plenary sessions on the following topics: Plenary I considered violations by Israel, the occupying Power, of the provisions of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem; Plenary II discussed the enforcement of the Fourth Geneva Convention; and Plenary III considered the upcoming Conference of the High Contracting Parties to the Fourth Geneva Convention on Measures to Enforce the Convention and its possible outcomes.

Presentations were made by 15 renowned experts in the fields of law, international law and international humanitarian law. Each plenary session included a discussion period open to all participants. The main points of the deliberations were highlighted in the final document of the International Meeting (annex I). The present report contains the full text of the presentations made by the invited experts in accordance with the programme of the International Meeting.

II. OPENING SESSION

H.E. Mr. Sayd El-Masry

Assistant Foreign Minister for Multilateral Affairs
of the Arab Republic of Egypt,
representative of the host country

It gives me pleasure to welcome you and your Meeting to Cairo for the fourth time, and I hope that this event, like its predecessors, will enhance the solidarity of the international community in support of the inalienable rights of the Palestinian people, rights that Egypt has constantly striven to consolidate, asserting the right of the Palestinian people to enjoy them fully, unequivocally and unconditionally.

We followed and participated in the African Meeting held by the Committee in Windhoek in April 1999, an important new opportunity for the African continent to reaffirm its steadfast position — alongside other members of the international community — in support of the restoration of the inalienable rights of the Palestinian people.

I should first like to commend the Committee's decision to devote this year's meeting to a discussion of the enforcement of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem. It coincides with the arrangements to hold a conference of the High Contracting Parties to the Convention in Geneva on 15 July 1999 on measures to enforce the Convention, pursuant to the resolution adopted by an overwhelming majority at the tenth emergency special session of the United Nations General Assembly on 9 February 1999. The resolution also affirmed the *de jure* applicability of the Convention in the Occupied Palestinian Territory, including Jerusalem. This development attests to the dynamic nature of the Committee and its ability to meet changing requirements. It shows that, in its tireless endeavour to restore the rights of the Palestinian people, it is also working for their preservation so that they can be enjoyed anew by the Palestinian people.

The idea of enforcing the Fourth Geneva Convention in the Occupied Palestinian Territory calls to mind the provisions of the Convention, which are daily flouted by Israel, forgetful of its status as a signatory. Article 1, which is common to all the Geneva Conventions, states that the High Contracting Parties undertake to respect and to ensure respect for the Convention in all circumstances. Article 32 prohibits any measure of such a character as to cause the physical suffering or extermination of persons subject to an occupying Power, including murder, torture, corporal punishment, mutilation and medical or scientific experiments.

It thus contains absolutely clear and binding provisions, but Israel, as an occupying Power, continues to see itself as standing above all international laws or treaties, even those to which it is a party, and persists in breaching the provisions of the Convention and all international treaties, norms and customs by arresting Palestinians, demolishing their homes, confiscating their land, depriving them of their livelihood, closing crossing points and blocking communications with the outside world — to the point where the occupied territories have been turned into a big prison, reminding the world that 20 centuries of human development and advancing civilization have failed to convince Israel that the continuation of those practices is neither acceptable nor possible.

A further reason for welcoming the theme of this Meeting is that full compliance with the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War seems to be the only available means of dealing with the unprecedented intransigence of the outgoing Israeli Government vis-à-vis the peace process. It not only refused to implement the agreements it signed but forged ahead with its plans to dispossess the Palestinians of more rights and to change the geographic and demographic character of the occupied territories, confiscating land, building new settlements and expanding existing ones in flagrant violation of the provisions of the Convention to which Israel was one of the early signatories.

The time has come for the international community to adopt a resolute stance against Israeli practices that breach all established norms, laws and customs, and to make Israel, as an occupying Power, face up to its responsibilities by affirming that its procrastination in implementing multilateral treaties is no less serious than its equivocal approach to implementation of the agreements it reached in the context of the peace process. If we fail to adopt such a resolute stance, we shall leave the door wide open for any State to follow Israel's example. The upshot would be — without exaggeration — an erosion of the basis of the international order as a whole, which requires full compliance with international commitments and obligations.

In addition to welcoming the Geneva Conference of the High Contracting Parties, we wish to affirm — no less ardently — that it does not by any means follow that enforcement of the Convention in the Occupied Palestinian Territory, including Jerusalem, is the end of the road for the territories and their people. Nor can the whole issue be boiled down to the situation of an occupied people without focusing on the need to restore the rights of that people. Enforcement of the Convention is rather a connecting link in the struggle of the Palestinian people and a reassertion by the international community of the fact that more than half a century of occupation and oppression have failed to erase any dimension of the issue from the world's memory.

I still remember your meeting here in the same place last April and I still remember the hopes which you expressed at that time to the effect that the deadlock in the peace process would be broken during the coming year when the parties continued their negotiations with good intentions and a firm resolve to implement any agreements reached. However, during the year that has passed since your last meeting, the setbacks and regrettable developments in the peace process have outnumbered the achievements and positive developments and the few positive developments that occurred were not attributable to Israel.

The principal positive development consisted in the declaration made at the European Union Summit at Berlin on 25 March 1999, which confirmed the right of the Palestinian people to self-determination, including the option to establish a State. It also confirmed the basic principles of the peace process, as adopted at Madrid, in particular the principle of land for peace. That declaration was warmly welcomed by all peace-loving States, which regarded it as an important step taken by the European Union in affirmation of its support for the legitimate rights of the Palestinian people.

That declaration signified a highly positive development in the position adopted by the European Union at its meeting at Cardiff on 16 June 1998 when it merely affirmed the right of the Palestinian people to self-determination, without excluding the option to establish a State. This development constituted further proof that the international community was rapidly losing patience in the face of Israel's persistent denial of legitimate and inalienable Palestinian rights and particularly the right to self-determination and the right to establish an independent Palestinian State.

This positive trend in the European Union's position was echoed in the resolution adopted by the Economic and Social Council of the United Nations on 27 April 1999 in which it affirmed the established and unconditional right of the Palestinian people to self-determination, including the option of a State. The Council also expressed its hope that this would soon be achieved.

On the same day in which the Economic and Social Council adopted that resolution, the United Nations Commission on Human Rights adopted a similar resolution confirming the right of the Palestinian people to self-determination, including the option of a State. The General Assembly of the United Nations also adopted a similar resolution at its session in December 1998, together with numerous other resolutions under the items entitled "The situation in the Middle East" and "The question of Palestine", in a manner that confirmed the overwhelming and ongoing support for the Palestinian cause.

Even in non-political forums, the international community continued its support for the rights of the Palestinian people. For example, at its meeting at Minneapolis in the United States in November 1998, the

International Telecommunication Union (ITU) agreed to allocate a code number to the Palestinian territories and to modify the status of Palestine by granting it more extensive rights than those enjoyed by other observers accredited to ITU, thereby enabling the Palestinian people to take a major step forward in their endeavours to complete the foundations of their independent State.

Those positive developments did not occur in a vacuum; they were consistent with the ongoing overwhelming support accorded to the resolutions on the question of Palestine that have been adopted by the General Assembly of the United Nations, which provide daily additional proof of the international community's increasing support for the right of the Palestinian people to establish their independent State. The most important of those resolutions was General Assembly resolution 52/250, entitled "Participation of Palestine in the work of the United Nations", which provided for a higher level of representation by the Palestinian delegation to the United Nations within the framework of its observer status.

However, the Government of Israel continued to obstruct the peace process and when, at one stage, Israeli obstinacy was threatening to destroy the peace process, a United States initiative to break the deadlock led to the holding of the Wye River talks. Unfortunately, the agreement reached was nipped in the bud by the previous Government of Israel.

Thus, the hope was dispelled before the ink had dried on the signed agreement and the previous Israeli Government once again reneged on its commitments, disavowed its obligations thereunder and intensified settlement in the Occupied Palestinian Territory while the Palestinian side fulfilled its obligations on time, as attested by the United States, the principal sponsor of the peace process which, as a result, once again entered the dark tunnel in which it had been stagnating since May 1996.

On 29 April 1999, the Palestinian Central Council adopted a responsible and positive attitude by deferring the proclamation of the Palestinian State and remaining in session until June. Egypt's support for that decision was in keeping with its support for all the decisions taken by the representatives of the Palestinian people and our firm position remains, as always, to support any decision reached by the Palestinian people, of their free and independent will, concerning the proclamation of the Palestinian State at the time of their choice.

The decision taken by the representatives of the Palestinian people should not be interpreted as a renunciation of their established legitimate right to proclaim their independent State, the postponement of the decision merely confirms that right since those entitled to proclaim the State also have the right to postpone its proclamation.

Today, we welcome the development brought about by the recent elections in Israel and we hope that this development will push the peace process forward on all tracks and that the coming period will witness a reactivation of the peace process. We share the conviction of most partisans of peace in and outside the region that the majority of the Israeli people voted for change and in favour of the peace process. We share their hope that the new Government will take practical measures confirming its choice of peace as the only path to a better future for all the peoples of the region in such a way as to restore hope of an end to the deadlock which has paralysed the peace process.

However, we believe that it is more important that these hopes and good intentions take the form of practical measures that confirm the sincere resolve of the new Israeli Government to push forward in the peace process on the basis of the Madrid principles, in particular the principle of land for peace, so that the peace process can proceed on all tracks, from the point at which it was halted, through the full, faithful and prompt implementation of all the agreements that have been reached. A lot of work still remains to be done in order to compensate for the three lost years, but this is the only way to give the peoples of the region renewed confidence in the peace process.

In the midst of the international community's optimism that the region would witness a new era of serious endeavours to achieve a just and comprehensive peace, we were surprised when work began at the settlements of Jabal

Abu Ghneim and Ras al-Amud and on the expansion of the settlement of Maaleh Adumim, a development that renewed everyone's fears concerning the destructive effects that the settlement policy would have on the peace process by pre-empting the desired final outcome of the negotiations. Accordingly, we are calling upon the new Israeli Government to cease the construction of new settlements and the expansion of existing ones.

Egypt, which was the first to advocate peace in the region, invites you and all peace-loving peoples and forces, in particular in Israel itself, to continue the peace process with good intentions, tirelessly and without delay. Peace begins initially in hearts and minds. If there is true determination appropriate actions will follow, and if the intentions are good the obstacles will be overcome, the difficulties will be easier to surmount and the door will be open to the finalization of the peace process in a manner conducive to a just and comprehensive peace and equal security for all the peoples of the region, without any discrimination, thereby creating a favourable environment for fruitful regional cooperation that will ensure prosperity for all.

As we approach the end of the second millennium, we and all peace-loving forces throughout the world are hoping that, when the twentieth century departs, its sufferings and tragedies will depart with it and the beginning of the third millennium will usher in a new era for mankind and for the Middle Eastern region in which everyone 's right to freedom, justice and equality will be recognized; an era in which peace, security, stability and prosperity will prevail in our region; an era in which all our children will grow up on land enjoying peace and cooperation instead of feuds and hatred, under a sky that radiates security and peaceful coexistence instead of artillery shells and the sounds of war and combat.

I wish you all every success in your deliberations on the noble objective for which you have gathered together. I also wish your distinguished Committee continued sound judgement in its work, which we constantly follow with the greatest admiration and esteem.

H.E. Mr. Kofi Annan

Secretary-General of the United Nations
(Message delivered by Mr. Chinmaya Gharekhan, Under-Secretary-General,
United Nations Special Coordinator in the Occupied Territories)

I have the honour of delivering the Secretary-General's message to this distinguished audience.

I would like to welcome the participants in this Meeting, held under the auspices of the Committee on the Exercise of the Inalienable Rights of the Palestinian People. I am hopeful that the Meeting will offer an opportunity to representatives of Member States, legal experts and representatives of civil society to discuss a broad range of issues pertaining to the various aspects of the Fourth Geneva Convention.

I also wish to express gratitude to the Government of the Arab Republic of Egypt for the hospitality and assistance it provided in organizing this event. Egypt has always played a key role in promoting and facilitating the Middle East peace process and its continued involvement in and commitment to this process is indispensable.

It is regrettable that the peace process has been deadlocked for some time now. The long pause in the negotiating process can cause renewed tension and mistrust between the parties. A number of important events, including the elections in Israel, have recently taken place in the region, raising hopes that the peace process will be restarted, allowing the parties to enter the crucial phase of the permanent status negotiations.

Since its early days, the United Nations has been closely involved in international efforts to achieve a comprehensive, just and lasting solution to the question of Palestine, based on United Nations resolutions 242 (1967), and 338 (1973), which have long been recognized as the cornerstones of an overall settlement. The Security Council and the General Assembly have consistently maintained that the territories that came under Israeli control during the 1967 war were occupied territories and that the Fourth Geneva Convention *de jure* applied to those territories.

Pending a political settlement, the most effective way of ensuring the safety and protection of the civilian population of the occupied territories would indeed be the full application of the provisions of the Convention.

The international community has repeatedly expressed its concern over the situation in the Occupied Palestinian Territory, especially as it relates to the question of the protection of the rights of the civilian population. At the resumed tenth special emergency session of the General Assembly, in February 1998, the Assembly urged the scrupulous application of the provision of the Convention and requested the High Contracting Parties to discuss possible measures that might contribute to its goals.

The Assembly also requested the Secretary-General to monitor and observe the situation regarding Palestinian civilians under Israeli occupation, making new efforts in that regard on an urgent basis. I shall do all that is in my power to discharge the responsibilities entrusted to me by the United Nations.

I would like to express appreciation to the Government of Switzerland, as the depositary of the four Geneva Conventions, and to the International Committee of the Red Cross for their efforts in upholding the integrity of the Conventions.

The peace process will not succeed, however, if tangible improvements in the living conditions of the Palestinian people are not made. Opportunities for Palestinian employment and commercial development, better health and education are urgently needed. I wish to take this opportunity to appeal once again for a continued assistance to and support of the activities of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the United Nations Development Programme and other United Nations entities, whose dedicated work on the ground helps build a viable Palestinian economy. An important role in that regard is also played by the Office of the United Nations Special Coordinator in the Occupied Territories.

For decades, the international community has worked to put an end to the continuous turmoil and instability in the region. Yet the success of any Israeli-Palestinian agreement ultimately lies in the hands of Israelis and Palestinians themselves. I appeal to the political courage of the leaders on both sides and call upon them to re-embark on the process of negotiations in a spirit of pragmatism and statesmanship.

These are the qualities that will help break down the walls of intolerance and suspicion. This will also help accommodate differences and lay the foundation of better understanding, dialogue and reconciliation. Difficulties for the leaders of the region lie ahead, yet the peace process must continue, as there remain no alternatives. The United Nations, for its part, will remain fully committed to the peace process and international efforts aimed at bringing peace, stability and prosperity to the entire region of the Middle East.

Please accept my best wishes for the success of your deliberations.

H.E. Mr. Ibra Deguène Ka
Chairman of the Committee on the Exercise
of the Inalienable Rights of the Palestinian People

At the outset, allow me, on behalf of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, to extend our heartfelt gratitude to our most hospitable host, the Government of Egypt. For several years now, the Committee has convened its meetings in this warm and friendly country, and our experience here has only been very positive and productive. I would like to thank H.E. Mr. El-Masry for accepting our invitation to open this Meeting. May I also take this opportunity to request H.E. Mr. El-Masry to convey our thanks to H.E.

Mr. Hosni Mubarak, President of the Arab Republic of Egypt, for all the facilities provided to us in this country that stands in the forefront of the struggle for the exercise by the Palestinian people of its inalienable rights.

Let me also welcome all the participants in this International Meeting on the Convening of the Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem. This International Meeting is of utmost importance as it precedes a conference of the High Contracting Parties to the Fourth Geneva Convention that will be convened in a month's time at Geneva.

As you know, fifty years ago, representatives of 63 Governments attended a conference in Geneva, from 21 April to 12 August 1949, to draft and agree on new international conventions intended to cope with the effects of war on civilian populations, as well as on military personnel. One of those international legal instruments, the Convention Relative to the Protection of Civilian Persons in Time of War, signed in Geneva on 12 August 1949, and widely referred to as the Fourth Geneva Convention, was designed to regulate the effect of war and its aftermath on civilians in zones of hostilities. The Convention sought to prescribe rules to mitigate the hardship and suffering imposed on civilian populations not only at times of hostilities per se, but also after a ceasefire or truce, when civilians could be subjected to military occupation in the absence of a final political settlement. The Convention includes a whole range of safeguards, which, if respected, would guarantee the minimum level of protection and well-being of innocent civilian population living under occupation.

The Geneva Conference of the High Contracting Parties to the Fourth Geneva Convention will be the first of its kind since the signing of the Convention. This is especially significant, as the Conference will deal with the long-standing problem of the Palestinian people living under illegal occupation. The Israeli occupation has gone on for over three decades now.

On the threshold of the new millennium, the Palestinians remain deprived of their inalienable rights and continue to endure harsh conditions in their day-to-day lives. They still live in despair and frustration, as peace in their land remains elusive. The protective powers of the Fourth Geneva Convention are meaningless for the Palestinian people who remain helpless, as they watch their rights being repeatedly trampled and ignored with surprising impunity by Israel, the occupying Power.

Today's generation of young Palestinians, growing up under occupation, has only known oppression, humiliation, insecurity and, most importantly, uncertainty about the future.

The Committee on the Exercise of the Inalienable Rights of the Palestinian People, since its inception, has devoted its work to drawing the attention of the international community to this monumental injustice. The international community has adopted numerous resolutions calling for the end of the occupation and a start of peace and reconciliation among Palestinians and Israelis. It has also affirmed the applicability of the Fourth Geneva Convention of 1949 to all territories occupied by Israel since 1967 and has time and again urged Israel to abide scrupulously by the provisions of that Convention. Moreover, during these years, the United Nations has adopted many resolutions requesting Israel to end the occupation and to promote peace and stability in the region.

As you may recall, in April 1997, the General Assembly convened the tenth emergency special session to deal with the "Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory." At the first resumption of that emergency special session, on 15 July 1997, the Assembly adopted resolution ES-10/3, in which it explicitly asked for the convening of a Meeting of the High Contracting Parties of the Convention. The Assembly's request was repeated in subsequent resolutions ES-10/4, ES-10/5 and ES-10/6. Now, exactly two years to the day since that first request, the High Contracting Parties are scheduled to meet in Geneva on 15 July 1999.

The convening of this Conference has become even more urgent at this dramatic point. On 4 May, the five-year interim period has come to an end without any breakthroughs in the peace process. Following the signing of the Wye River Memorandum, last October, the Israeli Government has once again unilaterally frozen its negotiations with the Palestinian side, grinding the peace process to a complete halt. Again, the Palestinian people were made to wait and hope for the rebuilding of the peace process. On the other hand, the Israeli Government wasted no time in building new settlements and expanding existing settlements in all of the Occupied Palestinian Territory, including Jerusalem. In constantly creating new facts on the ground, Israel wants to determine, in advance, the outcome of the permanent status negotiations. These activities constitute a complete violation of the bilateral agreements signed before the start of the permanent status negotiations. At the same time they are a violation of international humanitarian law. The Geneva Conference of the High Contracting Parties has thus come at a most opportune time and should be held without delay, with the full participation of all parties concerned.

The facts and practices on the ground make it clear that Israel, the occupying Power, remains engaged in continuous and systematic violations of the international humanitarian law. The violations of the provisions of the Fourth Geneva Convention are well known. While the experts at this meeting will examine these issues in more detail, I would like to highlight some of the provisions that have been regularly and unabashedly violated in the Occupied Palestinian Territory.

- The Convention clearly states that the occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies (article 49), but as you all know, the Israeli Government has been systematically establishing new settlements, including in East Jerusalem, and expanding existing ones. It has also openly supported the illegal setting up of mobile homes of settlers on hilltops very close to Palestinian towns and villages. The Israeli Government has actively encouraged these settlement activities. These acts constitute a *de jure* and *de facto* illegal annexation of Palestinian land, while provoking violence and instability in the area and making permanent status negotiations all the more contentious.

- Article 47 of the Convention prohibits the annexation, completely or partially, of the occupied territory by the occupying Power. However, Israel has occupied East Jerusalem in June 1967 and, subsequently, the Old City of Jerusalem and adjacent parts. The attempts to change the status of Jerusalem continues till today, in order to complete the judaization of the City contrary to its international status.

- The Convention states that protected persons should be treated humanely at all times and shall be protected especially against all acts of violence (Article 27), yet the Israeli army makes use of live ammunition to fire at unarmed demonstrators and uses torture as a method of interrogation.

- The Convention forbids individual or forcible transfers, as well as deportations of persons from the occupied territory (article 49), but hundreds of Palestinians have been deported since 1967 and many have not returned since.

- The Convention forbids the destruction of real or personal property belonging to private persons (article 53), but demolitions of Palestinian houses, leaving families homeless, as well as uprooting of orchards are commonplace.

- The Convention also forbids collective punishment or punishment for an offence a person has not personally committed (article 33), but the restrictions imposed by curfews and closures of borders with Israel and passages between the West Bank and the Gaza Strip are imposed on the entire population on an almost regular basis, exacting heavy economic losses on an already fragile Palestinian economy.

The list of Israeli violations can be continued and the international community is well aware of them. Our Committee as well as the Special Committee on Israeli Practices in the Occupied Territories have submitted many reports on these continuous violations. What has been lacking so far is the collective political will to develop an appropriate set of measures for the enforcement of the Convention.

The idea to hold this Meeting in Cairo originates in the decision of the Committee on the Exercise of the Inalienable Rights of the Palestinian People to provide an opportunity for the Governments, intergovernmental and non-governmental organizations, as well as experts on the issue to exchange views and perspectives on the various aspects of the Fourth Geneva Convention and its enforcement in the Occupied Palestinian Territory, including Jerusalem. The Committee was of the view that such a gathering would be useful, in the light of the Geneva Conference of the High Contracting Parties. Some of the issues raised in the course of our Meeting will most certainly reverberate in the coming deliberations in Geneva.

We welcome the participation in our Meeting of our distinguished panelists, who, in the coming days, will share with us their expertise and insight into the issue. We look forward to two days of lively, enlightening and productive discussions.

Also, on behalf of the Committee, I would like to express our appreciation for the important role played by the Government of Switzerland, in its capacity as the depositary of the Fourth Geneva Convention, and to the International Committee of the Red Cross, as the "guardian" of the Geneva Conventions of 1949. We wish to reaffirm our commitment to and full support for a successful convening of the Geneva Conference of the High Contracting Parties to be held next month.

As the Fourth Geneva Convention marks its fiftieth anniversary in August of this year, it is hoped that the vision and the ideals that guided its framers would inspire this important undertaking and that the fulfillment of the letter and spirit of the Convention would make a tangible difference in the lives of the Palestinian people.

H.E. Dr. Nabil Shaath

Minister for Planning and International Cooperation, Palestinian Authority,
representative of Palestine

Mr. Chairman and dear friend, Ambassador Ibra Deguène Ka, Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, a Committee that has really done a lot in difficult times to pursue the rights of the Palestinian people in their own land and to promote a just peace based on international law and on the exercise by the Palestinian people of its inalienable rights;

Mr. Sayd El-Masry, Assistant Foreign Minister for Multilateral Affairs of the Arab Republic of Egypt, representative of the host country Egypt, which has, once again, agreed to hold a meeting under the auspices of this United Nations Committee in the beautiful city of Cairo to prepare for the very important conference on 15 July in Geneva that will really be a first of its kind to consider if international humanitarian law can be made to work, to render it really enforceable in a situation where its enforcement is most important for the protection of peace, stability and the rights of peoples under occupation;

Mr. Chinmaya Gharekhan, dear friend, Under-Secretary-General of the United Nations, Special Coordinator in the Occupied Territories and Representative of Mr. Kofi Annan, the Secretary-General of the United Nations, thank you for being here and for representing the United Nations, which remains to us a very, very important basis for our struggle and support for justice based on international law and the rights of people. Your being here, as your being in Palestine, is something we appreciate very much and we would like to thank Mr. Kofi Annan for all the work the United Nations has been doing for the Palestinian people.

This is an important meeting and it is in preparation for a most important conference that will take place very soon in Geneva. It is very important because it is an effort at trying to put teeth into the rules of international humanitarian law. The protection provided by the Geneva Conventions, a very important source of international humanitarian law, cannot really be guaranteed if it cannot be enforced. That is why the idea of its enforcement had been incorporated in its common article 1. If this Convention succeeds in a very specific case on the basis of an international consensus on the situation regarding Palestine, if this Convention succeeds in bringing about the modalities for the exercise of measures to enforce international humanitarian law to guarantee the protection of a people under occupation, it would create a very important precedent. Its generalization for the benefit of other peoples would be possible and international humanitarian law would become a source of protection stopping violations of peace and stability. It would render the use of massive force, such as recently in Kosovo, a matter of last resort to be delayed until all other enforcement measures have been exhausted. It would benefit the protection of not only the Palestinian people but of all people who suffer from war and occupation. This makes 15 July a very important date and holding the said Conference on that date is of utmost importance.

Allow me to address some of the issues surrounding the meeting of 15 July, in order to dispel, if possible, existing doubts regarding this Conference and to mobilize your support for a successful meeting. The application of the principles enshrined in the Geneva Conventions, the enforcement of international humanitarian law, would certainly benefit a better world, peace and stability.

The violations of the Geneva Conventions in Palestine are very real indeed. I will not elaborate on the humanitarian consequences of these violations for the Palestinian population: they are all very well known to you. In fact, Ambassador Ka and Ambassador El-Masri have very clearly identified the seriousness of those violations. But I would like to emphasize two very important aspects of these violations which are seriously damaging the prospects for peace in the Middle East, namely the problem of settlements, colonization and annexation; and the problem of serious changes in the demographic structure of the people living in the land occupied by Israel, in particular in the land occupied since 1967.

Colonization and settlements are phenomena that have seriously afflicted the last three major chronic conflicts in the world, two of which have been solved by now, namely, South Africa and Ireland; what remains is the case of Palestine. Settlement-type colonialism aiming to change the demographic structure of the people under occupation is a very serious problem indeed and it becomes extremely chronic, thus rendering a solution very difficult. In situations like Kosovo, the problem is acute and acute problems can be dealt with, sometimes, by quick surgery, but chronic problems are very, very difficult to solve. Just look at the difficulties we are facing in implementing the peace process in Palestine.

But it is a matter of utmost concern that, while we are at a peace process, colonization continues in the form of the building of settlements, demolition of houses, annexation of territories, confiscation of land, as well as by dividing the land by so-called bypass roads. The purpose is to "bantustanize" Palestine and turn it into pockets that cannot ever become a viable entity, a viable State. We went to Madrid for the start of the peace process in 1991 and we signed the Oslo Accords in 1993. Eight years have passed since Madrid and almost six years since the historic signing at the White House in Washington of the Oslo Accords. Yet colonization continues and new and expanded settlements consolidate the occupation instead of ending it gradually. While 10 per cent of the Palestinian territory in the occupied West Bank has come now under full Palestinian jurisdiction, the rest of the territory is still subjected, on a daily basis, to land confiscation, to demolition of houses, to the building of settlements and to the mutilation of the Palestinian territory. That is, in fact, the most serious reason for asking your help and for convening the Conference in Geneva, in order to address the question of enforcement of the Geneva Convention while we are pursuing the peace process. This Conference would not be necessary, had the peace process succeeded in freezing settlements as we all understood from the Oslo principles preventing the occupier from unilateral action that would preempt the outcome of the peace process. Israel continued to pursue such unilateral action to consolidate its colonization and to mutilate the Palestinian territory.

The Geneva Conventions, which were signed 50 years ago, are in need of a mechanism to ensure their respect. Finally, the General Assembly emergency sessions provided a long set of resolutions asking the High Contracting Parties to convene in order to decide on political resources at their hand to enforce the Geneva Conventions in the occupied territory. In the final analysis, the gist of these resolutions consists of the following:

1. The call upon Israel to comply with the Fourth Geneva Convention, which requires accepting its *de jure* applicability in the territories it has occupied since 1967, which, in itself, is a grave violation of the Convention;

2. The call upon Israel to reverse all actions, with specific reference to Jerusalem, that contravene the Convention. We cannot accept the so-called amicable de facto humanitarian implementation, as Israel claims, of the Geneva Convention. The Geneva Convention cannot be applied selectively. Selective application of the Geneva Convention that follows the whims and fancies of the occupying Power means the destruction of the basis of international humanitarian law and therefore of the Geneva Conventions themselves;

3. The call for the enforcement of the Convention by the High Contracting Parties pursuant to common article 1;

4. The recommendation to the High Contracting Parties to convene a conference on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, and the recommendation that the Swiss Government, as the depositary of the Convention, undertake the necessary steps in that regard, including the convening of a meeting of experts.

By now, all the steps have been exhausted. We tried a four-way meeting in order to give Switzerland the opportunity to test the willingness of Israel to finally accept the *de jure* application of the Geneva Conventions. The so-called "Villa Sorenson" exercise that took place in Geneva about a year ago and brought together the Government of Switzerland, the International Committee of the Red Cross (ICRC), Palestine and Israel, from our point of view, had one objective: to give Switzerland, ICRC and the High Contracting Parties a final opportunity to test whether Israel is willing to abandon its past stance and to accept the *de jure* application of the Geneva Conventions. If it had accepted, we would have agreed, in a conciliatory way, to schedule its implementation, in order to bring about Israel's compliance with the Conventions. Israel never did. It never did accept the *de jure* applicability. It never accepted, even voluntarily, the implementation of the Convention, in particular with regard to the settlements, the annexation and, of course, the problem of collective punishment of the Palestinian population, which have put the Palestinian territory under real siege since the start of the peace process. Israel totally refused to cooperate and therefore we went to the second stage, the expert meeting in Geneva. If the expert meeting had succeeded in anything, it has succeeded in providing a very simple explanation of the problem: when countries that are signatories, High Contracting Parties to the Geneva Conventions, become themselves occupiers and refuse to apply, *de jure*, the Geneva Conventions in the land they occupied, and if every effort at persuading them fails, then the problem is how does the community of High Contracting Parties enforce the Conventions on the occupying Power? If that were the only conclusion of the expert meeting, to my mind, that was good enough.

Having taken note of the problem formulated by the expert meeting, the General Assembly, in its emergency special session, recommended to convene the actual conference that will give the High Contracting Parties the opportunity to develop adequate measures of enforcement of the Geneva Conventions. There is no way that this can be avoided. Avoiding it would be equal to admitting that it is impossible to adopt non-violent actions to enforce international humanitarian law, in particular, its main source, the Geneva Conventions. It would be equal to calling upon the people of Palestine to use only violent actions to protect their land. I hope you understand the seriousness of the issues at hand.

The Geneva meeting on 15 July is an opportunity for the international community, in particular the community of High Contracting Parties to the Geneva Conventions, to tell the Palestinian people:

> "You do not have to resort to violence in order to protect your territory. Now that you are in a peace process, we are on your side and we will introduce measures, individually and collectively, that represent non-violent options and we will make these non-violent options work. You will not only get words of support from the international community, you will get measures of enforcement. Israel will feel the weight of the international community, in particular that of the High Contracting

Parties, opposing its actions of perpetuating occupation while, at the same time, it is negotiating for a permanent peace."

And, normally, that cannot possibly be misunderstood. This whole process would not be necessary, if Israel had, at the time when it agreed to enter the peace process, abandoned its methods of further occupation, further mutilation and further annexation of the Palestinian territory, which one would have expected as a measure of good will. But to pursue a peace process that is based on international law and Security Council resolutions, in particular resolutions 242 (1967) and 338 (1973), and to implement the agreements in a stage by stage approach, and, at the same time, to continue to use force to cement the occupation, is really untenable and totally unacceptable. A remedy should be found, a remedy, I would like to stress, that is non-violent. We are not asking for massive bombing of Israeli towns or for a total siege of Israeli ports. We are asking you to commit yourself to seriously make Israel understand that the international community, in particular the High Contracting Parties, are going to stand by the principles of international humanitarian law, as laid down in the Geneva Conventions and to stand by the Palestinian people until Israel ends all illegal measures of perpetuating occupation and annexation of the Palestinian territory. At the same time, the international community should express its hope that Israel will be in a position to negotiate with the Palestinians all the measures needed for a permanent, just and comprehensive peace based on international law and justice.

Let me make, in conclusion, a comment regarding the new Israeli Government, which might be quite different from the one before. We believe that the Israeli electorate has given a mandate to whoever forms this new Government and to whoever joins it to pursue peace. We do not see these elections in Israel as being about religion and secularism. Nor do we see them as being about how Israel can be run by the left or by the right, or by groups of different ethnic origin. We see the elections in Israel as being a clear manifestation that the Israeli people sees no alternative to peace with the Palestinian people and with the rest of the Arab people whose land has been occupied by Israel in 1967. We see it as a mandate for Mr. Barak to embark as quickly as possible on:

1. Doing all that is needed to implement the interim agreements that have not been implemented.

2. Ceasing and desisting immediately from any action that perpetuates colonization and annexation, in particular in Jerusalem, and proceeding, in earnest, to the permanent status negotiations, in order to bring about, within a maximum period of one year, a permanent peace between Israel and Palestine, Israel and Syria, and Israel and Lebanon.

And, of course, we would like to be as optimistic as you all are. We would like to see peace becoming a reality as soon as possible. There is no end to a chronic conflict like ours with the Israelis except to build a real peace that is based on the existence of two good-neighbourly States in Palestine/Israel and to establish real peace with Syria/Lebanon as it has been established with Egypt and Jordan. Of course, we would like to see that happen and, of course, if it happens, we will, in good faith, do everything we can to cooperate with Mr. Barak to come to a quick conclusion. But we cannot put all our non-violent weapons down, based only on optimism and good faith. We have to see Mr. Barak freezing settlement activities and, if he does, the meeting in Geneva will not be confrontational. The Geneva meeting is important for the future of the Palestinians and Israelis, in fact, for all communities suffering from occupation. So we would like to see that conference happen. But we promise you, if Mr. Barak, on the morning of 15 July, declares a total end to settlement activities, annexation activities, the meeting will go on but will not be just a political confrontation of Mr. Barak. Neither do we want this conference just to be a political confrontation of any particular prime minister. We wanted to set the climate, the rules and the mechanism for real concerted action by the High Contracting Parties to ensure respect for the Geneva Conventions and, therefore, to protect our people and other people under occupation. We would love to see nothing but peace achieved and we see this peace process as being irreversible and we see it as possibly helpful to all the people in the area. I have told my Israeli friends a number of times, you should be the first to support the Geneva Conventions having teeth because, as Jews, you have suffered seriously in times of occupation and it is protection for your people in the future as it is protection for the Palestinians, the Israelis and the rest of the world.

We cannot evade that responsibility and we cannot accept peace based on force and occupation. We want peace based on justice and international law. And compromise. And consensus. Of course! That is something we are ready to do if you help protect us while doing it.

Thank you very much for all that you have done and all that you are going to do. Thank you very much.

III. PLENARY I

Violations by Israel, the occupying Power, of the provisions of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem

H.E. Mr. Taher Shash
Legal Advisor to the Arab Organization for Human Rights and
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The Fourth Geneva Convention is one of the most important of the four Conventions signed by the representatives of the States of the world at the Conference that met in Geneva from 21 April to 12 August 1949. The purpose of that Convention was to afford greater protection to civilian persons in time of war since it had become abundantly clear that it was civilians who suffered the harshest conditions during the Second World War — in particular those who were under occupation — and that they urgently needed such protection.

Part III, section III, of the Convention concerns occupied territories and contains provisions concerning the civilian population of those territories which codify established customary principles with respect to military occupation and spell out, in the light of the experience of warfare, the necessary protection for such persons. The rules of international law, both customary and treaty law, have established that military occupation does not affect sovereignty over an occupied country and that such occupation does not transfer sovereignty to the occupying Power. From the second half of the eighteenth century onwards, international law came to distinguish between the military occupation of a country and territorial acquisition by invasion and annexation, the difference between the two being expounded by Vattel. The distinction then became clear and has been recognized among the principles of international law since the end of the Napoleonic wars in the nineteenth century. Invasion and annexation later ceased to be recognized by international law and were rejected and no longer accepted as a means of territorial acquisition. The Convention respecting the Laws and Customs of War on Land (The Hague, 1907) contained provisions concerning the protection of civilians and their property in occupied territories. Article 42 of the Convention provides that: "Territory is considered occupied when it is actually placed under the authority of the hostile army". Similarly, the following article spelled out the duty of the occupying State to restore public order and ensure respect for the laws in force in the country. Article 55 specified the authority of the occupying State with respect to public buildings and property, agricultural estates, forests and other state property on the understanding that the occupier was to be regarded as administrator and usufructuary, being bound to safeguard the capital of the properties and administer them in accordance with the rules of usufruct. The articles also afforded protection to transferred public property, places of worship and so forth, and obliged the occupying State to respect human rights and personal freedoms.

The Fourth Geneva Convention codified these provisions, which became established as binding international customs while, at the same time, they were safeguarded by the principles and purposes of the Charter of the United Nations, especially the principle of sovereign equality and the principle of self-determination.

The principles established in international treaty law include the provision that treaties in force are binding upon the parties to them, and that the parties are bound to give effect to the treaties in good faith and not to invoke their internal law as justification for their failure to perform a treaty.

These two principles are codified in articles 26 and 27, respectively, of the Vienna Convention on the Law of Treaties of 1969.

Israel has violated both these principles, claiming that the Fourth Geneva Convention is not applicable to the West Bank territories, including Jerusalem and the Gaza Strip; it has committed, and continues to commit, blatant violations of that treaty, which affords protection to the civilian population of occupied territories, and, in fact, has ignored the developments in international law since the nineteenth century as well as the international order, the rules of which were established by the Charter of the United Nations.

That was not the position of Israel following its occupation of the Palestinian territories in June 1967 when military orders explicitly provided that the Geneva Convention took precedence over the security laws. However, it was not long before this position changed: the text in question was revoked on 22 October 1967 and the Israeli Minister of Justice stood up in the Knesset to announce that Israel must not regard itself as an occupying Power in the territories which its defence forces had liberated from foreigners, and which were considered to be part of the "land of Israel" (Eretz Israel).

Israel thus thought that it had found a loophole that released it from the obligation to implement the Fourth Geneva Convention whereby the Palestinian West Bank became Judea and Samaria where the Jewish national presence had come to end 20 centuries earlier. Israel announced that it was not bound to apply the Fourth Geneva Convention there or in the Gaza Strip because, so it claimed, the Convention was not applicable, *de jure*, to those territories or to their population, even though Israel would respect the humanitarian provisions of the Convention.

Israeli lawyers went to great lengths to think up a theory, to which they attempted to give a veneer of legality, in order to rationalize Israel's disclaimer of responsibility for implementing the Fourth Geneva Convention in the Occupied Palestinian Territory.

Perhaps the most celebrated Israeli literary creation in this connection is the article written by Professor Yehuda Blum under the title: "The missing reversioner: reflections on the status on Judea and Samaria".

In essence the article claims that the Fourth Geneva Convention assumes the existence of prior legitimate sovereignty over the occupied country, whereas Israel regards the sovereignty of Jordan over the West Bank as not being legitimate since Jordan had occupied it during a war of aggression in 1948. The same applies to the Gaza Strip, which had been occupied by Egypt during the same war, although it did not claim sovereignty over it. Israel, on the other hand, had occupied the two regions in a war of defence, and therefore had a stronger claim to sovereignty over them.

Israel's official position relies on the fact that the second paragraph of article 2 of the Fourth Geneva Convention provides that the Convention is applicable to the occupation of the territory of a High Contracting Party and that, since Israel does not recognize Jordanian or Egyptian sovereignty over the West Bank and the Gaza Strip, Israeli recognition of the legal application of the Convention to those territories would be an implicit recognition of the prior sovereignty of the two States over them.

It is clear that the only purpose of such arguments is to relieve Israel from the obligation to implement the Fourth Geneva Convention in those Occupied Palestinian Territories.

There is no need for us to recapitulate the events of history or to elaborate on the legal status of the West Bank and the Gaza Strip; it may suffice, in this context, to recall that the West Bank and the Gaza Strip are parts of the region specified as the Arab State of Palestine by General Assembly resolution 181 (II) on the partition of Palestine, and that Security Council resolution 242 (1967) recognized the territories that have been occupied since June 1967 as occupied territory and requested Israel to withdraw from them, affirming the established legal principle of the inadmissibility of the acquisition of territory by war. Similarly, there is no need for us to affirm the right of the

Palestinian people to self-determination in accordance with international law and the Charter and resolutions of the United Nations.

The second paragraph of article 2 of the Fourth Geneva Convention provides that the Convention shall apply in all cases of partial or total occupation of the territory of a High Contracting Party. Article 47 provides that:

> "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory."

It follows that the Fourth Geneva Convention applies to all cases of occupation by war, and irrespective of Israel's claims concerning the legal status of the West Bank, including Jerusalem, and the Gaza Strip, and that no State is entitled, on any grounds, to avoid responsibility for applying it. If that were not so, the Convention would become ineffective in the event that States were permitted to cast doubt on the sovereignty of the regions it has occupied or in the event of the acceptance of arguments such as those put forward by Israel, either in support of its non-recognition of sovereignty over the West Bank and the Gaza Strip, or based on the fact that it has not promulgated local legislation for the application of the Fourth Geneva Convention.

Similarly, in accordance with article 6, the long period of military occupation does not excuse Israel from applying the Convention as long as it continues to exercise the functions of government in the occupied territories.

In accordance with article 47 of the Convention to which I have referred, the Oslo Agreements, and any subsequent agreements between Israel and the Palestinian Authority, do not affect the application of the Fourth Geneva Convention.

The international community has taken a firm stand against the Israeli claims and the practices and violations of Israel in the Palestinian territories; the General Assembly of the United Nations and the Security Council have affirmed the legal status of those occupied territories and the applicability of the Fourth Geneva Convention to the West Bank, including Jerusalem, and the Gaza Strip, have called on Israel to apply it, have taken the view that the actions of Israel and the measures taken are in violation of the provisions of the Convention and are null and void, and have requested Israel to rescind them and desist from them.

There is no need for us to enumerate the resolutions, which were adopted almost unanimously, since they are numerous and time is short.

Israel's objective in repudiating the implementation of the Fourth Geneva Convention was clear from the outset. Within days of its occupation of East Jerusalem, the Knesset adopted legislation making it subject to Israeli law, justice and administration. An immediate start was made on measures to annex and Judaize the Holy City, the Magharibah Quarter was demolished and its Palestinian residents expelled, and the surrounding Palestinian villages were brought within the boundaries of the municipality of Jerusalem. The Arab city was then surrounded on every side by Israeli settlements. On 30 June 1980, the Knesset adopted legislation proclaiming the unified City of Jerusalem as the capital of Israel and Israel carried on, as it is still continuing to do, with its settlement activities, reducing the number of Palestinian residents, displacing them, confiscating their identity cards, destroying their homes in East Jerusalem, extending the boundaries of the City in accordance with its legislation, establishing Greater Jerusalem and separating it entirely from the remaining West Bank territories. In particular, they completed the establishment of the Har Homa settlement at Jabal Abu Ghneim and extended the Adumim settlement and others. Lastly, the expanded City was annexed to the Jewish State.

It has long been established in international law that military occupation does not transfer sovereignty to the occupying Power and that the annexation of an occupied region, either wholly or in part, is illegal and without validity. This principle has been affirmed by the Charter of the United Nations, in its prohibition of the use of force, and it was also affirmed by Security Council resolution 242 (1967). In spite of that, Israel has annexed occupied East Jerusalem and has continued, both there and in the remaining West Bank and Gaza Strip territories, to violate the provisions of international law and of the Fourth Geneva Convention.

Article 49 of the Convention provides that: "The occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". The official comment of the International Committee of the Red Cross made it clear that this text was adopted in order to prevent a recurrence of the practices of certain States during the Second World War that resorted to transferring parts of their own populations to occupied areas for political and ethnic reasons with the aim of colonizing them, thereby impairing the economic status of the original populations and jeopardizing their existence as an ethnic group.

In fact, Israeli settlement activity in the occupied territories is still more dangerous than that, since its purpose is to create facts on the ground, leading to the seizure by Israel of vast areas of the occupied territories, and to prevent the establishment by the Palestinian people of their own State and their exercise of their legitimate right to self-determination, an objective that was acknowledged by Yitzhak Shamir, the former Prime Minister of Israel.

Israeli settlement activity in the Occupied Palestinian Territory is not merely a violation of article 49 of the Fourth Geneva Convention, but is a flagrant violation of numerous other provisions, including article 64, which is violated by Israel's decision to apply its own laws to the settlements and to the settlers and to make them subject to its courts, and the provisions that prohibit the occupying Power from confiscating territory, expelling and deporting the population and destroying their homes.

While claiming that it is bound by the humanitarian provisions of the Fourth Geneva Convention, Israel is continuing its shameless violations of those provisions.

The Jewish State is the only State in the world that has enshrined in law the torture of the population of the Occupied Palestinian Territory.

The Israeli occupying forces resort to the use of numerous forms of physical and psychological torture of the Palestinian population, including violent beating, electric shocks, sleep deprivation, playing deafening music and other blatant infringements of article 32 of the Convention. They also deport Palestinians, in clear violation of article 49, and they use administrative detention for renewable periods of up to six months, thus infringing article 42, and violate all the provisions of the Fourth Geneva Convention concerning human rights in the Occupied Palestinian Territory, including the right to life, physical security and individual freedoms. In a blatant violation of article 33, the Israeli occupying forces inflict collective punishments on the population, including the destruction of homes occupied by any suspected person in Palestinian villages, and they close Palestinian self-rule areas, isolating them totally from the outside world. The population is thus prevented, at the whim of the occupying Power, from moving from one part of the area to another.

The failure to apply the provisions of the Fourth Geneva Convention in the Occupied Palestinian Territory has become a threat to international peace and security. The General Assembly of the United Nations convened its tenth emergency special session on the basis of its resolution entitled "Uniting for peace" and adopted its resolution ES-10/6 on 9 February 1999 which reiterated its recommendation concerning the convening of a Conference of the High Contracting Parties to the Convention in Geneva on 15 July 1999 to take measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, and to ensure respect for the Convention in accordance with its article 1.

The resolution referred, in particular, to Israel's settlement activity, including the construction of a settlement at Jabal Abu Ghneim, and of other settlements, and the expansion of existing settlements, the construction of roads and the confiscation of lands, asserted that such actions were illegal and violated international law, and expressed concern at the violations by Israel of the Fourth Geneva Convention and at the dangers that would ensue from a continuation of such violations.

We attach great importance to the timely convening of the Conference on 15 July 1999 and to the agreement, to be reached by the Conference, on resolutions that will assert international legitimacy, not only by affirming the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including Jerusalem, and the illegality of Israel's violations of its provisions, especially its settlement activities in Jerusalem and elsewhere, its confiscation of territory, its road building and the changes it is bringing about in those territories, but also by deciding on ways and means to ensure the enforcement of the Convention, including the machinery necessary for that purpose.

We appreciate the initiative of the Committee on the Exercise of the Inalienable Rights of the Palestinian People with respect to the convening of our present Conference and we consider that that initiative makes a great contribution to the preparation of the Geneva Conference on 15 July next.

In order for our own Conference to achieve the purpose for which it was convened, we must reiterate our condemnation of Israel's violations of the provisions of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem, and the danger they represent for international peace and security and for the attainment of a lasting, comprehensive and just peace in the Middle East.

We must also discuss and propose adequate ways and means for the enforcement of the provisions of the Convention in the West Bank, including Jerusalem, and in the Gaza Strip.

Last but not least, we must declare our commitment to the convening of the Conference of the High Contracting Parties to the Convention at the specified time in order for it to carry out the task conferred on it by the General Assembly of the United Nations, wishing it success so that the civilian population of the occupied territories will enjoy the protection afforded to them by the Convention, so that the sanctity of international agreements is respected, and international legitimacy strengthened, under the Charter of the United Nations and the law of nations.

The Fourth Geneva Convention binds the Parties to it to respect and ensure respect for it (article 1) and places numerous obligations on them, including the obligation to institute inquiries concerning any infringement of its provisions as specified in article 149, together with the provisions of article 146 concerning the enactment by the Parties of legislation to penalize and bring before its own courts persons who have committed grave breaches of those provisions.

Mr. Farouk Abu-Eissa
Secretary-General,
Arab Lawyers Union, Cairo

The defence of the rights of peoples, central to which are the legitimate rights of the Palestinian people including its right to return, its right to self-determination and its right to establish its own independent national State in its territory, with the Holy City of Jerusalem as its capital, is at the core of the objectives of the Arab Lawyers Union. The Union has also endeavoured, through its consultative status with the United Nations, to work with the Committee on the Exercise of the Inalienable Rights of the Palestinian People to establish a committee for coordination between international non-governmental organizations concerned with the Palestinian cause and has been striving, in various international forums and conferences, to put into practice the rules of international law and specifically to ensure the application of the Fourth Geneva Convention and to expose the abuses of Israel in the occupied Arab territories. In addition, the Union has been intent on cooperating with the Egyptian and Arab diplomatic efforts aimed at convening a meeting of the High Contracting Parties to the Fourth Geneva Convention to examine its application to the Palestinian and Arab territories occupied by Israel. That endeavour ultimately bore fruit with the adoption by the General Assembly of the United Nations of its resolution calling for the convening of an international conference on 15 July 1999 to discuss the necessary measures to oblige Israel to apply the provisions of the Fourth Geneva Convention to the Occupied Palestinian Territory, including Jerusalem.

Since Israel occupied the Palestinian territories in 1967 and up to the present day, it has refused to recognize them as occupied territories or to apply to them the Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War. At the same time, the international community, both as individual States and through the United Nations, recognized that the Palestinian territories that were held by the Israeli forces were occupied territories and that Israel, the occupying military Power, was obliged to apply the provisions of the Geneva Convention as a matter of law to those territories.

Since 1967, the United Nations has been requesting Israel, as the occupying military Power, to apply the Convention in view of the systematic violation by its forces of the provisions of the treaty and of basic Palestinian rights. The Israeli forces have long continued to expropriate Palestinian land and property, to torture Palestinians, to destroy their homes, to expel them, to torture their families and curb their freedom to travel, to build and so forth.

Immediately after the Netanyahu Government took power in Israel, the occupying military Power, it began, in a frantic race against time, to order the building of Jewish settlements in the Occupied Palestinian Territory, including occupied Jerusalem, with the aim of putting an end, once and for all, to the Arab presence in Jerusalem and the complete Judaization of the City. The Government of the occupying military Power seized Jabal Abu Ghneim in the Holy City and proceeded to build a Jewish settlement there. This gave rise to vehement protest and the General Assembly of the United Nations adopted a series of four resolutions affirming that the Fourth Geneva Convention of 1949 was applicable, *de jure*, to the Occupied Palestinian Territory and that Israel, the occupying military Power, was obliged to apply its provisions. Because the occupying military Power had not complied with its obligations, the General Assembly called on the High Contracting Parties to the Convention to carry out their legal obligations in accordance with article 1 of the Convention whereby the High Contracting Parties undertake to respect and to ensure respect for the Convention in all circumstances.

In its resolutions, the General Assembly called on the High Contracting Parties to convene a conference on measures to enforce the Convention in the Occupied Palestinian Territory and, to that end, the General Assembly invited the Government of Switzerland, in its capacity as the depositary of the Geneva Convention, to undertake whatever steps were necessary to convene the Conference, including the possible convening of a meeting of experts to prepare for the Conference.

The Government of Switzerland convened a quadripartite meeting from 9 to 11 June 1998 to which it invited the Israeli Government, the Palestine Liberation Organization and the International Committee of the Red Cross to examine ways of enforcing the Convention in the occupied territories in general, as well as outside the occupied territories.

In fact, such a meeting to address the subject of the enforcement of the Convention in the Occupied Palestinian Territory is a matter between Palestine and Israel, and was never an objective of the United Nations.

From 27 to 29 October 1998, at the invitation of the Government of Switzerland, a meeting of experts attended by representatives of the High Contracting Parties, together with representatives of the Palestine Liberation Organization, was held. The meeting concentrated on examining overall problems connected with the application of the Convention in general and in occupied territories in particular. The objectives of the meeting did not include discussion of the application of the Convention in the specific case of the Occupied Palestinian Territory, in spite of the fact that the relevant resolutions of the United Nations had mandated the Government of Switzerland to prepare for the Conference of the High Contracting Parties exclusively concerning those territories. The speech by the United

Nations High Commissioner for Human Rights, Mary Robinson, at the meeting gave rise to a storm of protest from Switzerland when she referred to the Occupied Palestinian Territory and to the necessity of examining ways of enforcing the Convention in those territories. However, she was certainly acting in accordance with the resolutions of the United Nations in affirming that the Occupied Palestinian Territory were the purpose of the meeting and it is clear that most of the measures taken by Switzerland were not in keeping either with the United Nations resolutions or with Switzerland's role as the depositary of the Convention.

On 9 February 1999, in a highly important development, the General Assembly adopted resolution ES-10/6, which specified 15 July 1999 as the date for the convening of the Conference of the High Contracting Parties and invited the Government of Switzerland, in its capacity as depositary, to undertake whatever preparations were necessary prior to the Conference. The fact that the General Assembly had specified a date for the Conference was an important step by the international community towards the establishment and affirmation of the legal obligations devolving on the High Contracting Parties to the Geneva Convention and towards the application of those obligations to the enforcement of the Convention in the Occupied Palestinian Territory, including Jerusalem. In view of the importance of the call for the convening of a Conference of the Parties at the specified time, and in order to ensure that it will be successful and will attain the desired objectives, there are a number of matters that must be given the most serious consideration if the international community really wishes to establish the legal status of the Palestinian territories as occupied territories, to apply the Convention, as a matter of law, to those territories and to provide protection for the civilian population of Palestine:

1. The convening of a special Conference of the High Contracting Parties to the Fourth Geneva Convention is an important and unusual event and an unprecedented step in the history of the Convention. Since the adoption of the Convention in 1949 and up to the present day, the Contracting Parties have not been invited to a meeting to examine measures to enforce the provisions of the Convention in a specific case. The gravity of the circumstances facing the Occupied Palestinian Territory and the continuing violation of Palestinian rights under the long-term occupation demand, first and foremost, that the Conference be convened on 15 July of this year in accordance with the objective specified by the United Nations. The convening of the Conference, as an unprecedented event, places great responsibilities on the High Contracting Parties. The future of the Convention's enforcement in other parts of the world will depend on the steps taken by the Conference and the measures it adopts with respect to its enforcement in the Occupied Palestinian Territory; in other words, the Conference and its outcome will constitute a precedent that will determine the destiny of the Convention and its enforcement elsewhere. The High Contracting Parties, who will establish and make the law at the forthcoming meeting, must carry out their legal obligations with the utmost integrity and sense of responsibility, must make the Conference a forum for the support of victims worldwide and make respect for the rules of international law the basis for a new world.

Furthermore, the Conference is not an objective in itself, but a means available to States to work, not individual States or groups of States but collectively, for the enforcement of the Convention by carrying out their individual duties as specified in article 1 of the Convention.

2. The convening of the Conference marks the beginning of respect for United Nations resolutions and for the wishes of the international community. The recent series of resolutions concerning the convening of the Conference was adopted by the General Assembly in accordance with resolution 377 (V) entitled "Uniting for peace", which the General Assembly adopted on 3 November 1950. Under that resolution, the Assembly can address any case where there is a threat to peace, a breach of the peace or active aggression where the Security Council fails to exercise its primary responsibility for the maintenance of international peace and security. The General Assembly therefore affirms unequivocally, that the actions of the Israeli military occupying forces are a violation of the provisions of the Fourth Geneva Convention and a threat to international peace and security.

3. The preparations for convening the Conference of High Contracting Parties is a duty that devolves upon the Government of Switzerland. The failure of the Government of Switzerland to carry out the role entrusted to it does not prevent the High Contracting Parties from performing their own role. The call for the convening of the

Conference necessarily implies the serious preparations specified by the United Nations in its resolutions. The Government of Switzerland must take into account, first and foremost, the interests of the Palestinian civilians whether under occupation or otherwise. The prior preparations made by the Government of Switzerland are not in accordance with the resolutions of the United Nations, or with its role as the depositary of the Convention; the functions of the depositary of any convention are international in nature and a depositary is under an obligation, in the performance of its functions, to act impartially. Moreover, the functions are merely administrative, except where otherwise specified by the Convention, as stated in articles 76 and 77 of the Vienna Convention on the Law of Treaties.

4. We must insist on the necessity of convening the Conference on time; a failure to convene it would be a serious threat to the legal status of the occupied territories and would disregard international humanitarian law. Any arrangement as an alternative to the Conference would flout international law and would merely reinforce the Israeli Government's persistence in its practices which violate the provisions of the Convention and other rules of international law, and would inevitably tend to worsen the situation in the Occupied Palestinian Territory and give rise to a major threat to international peace and security.

5. The convening of the Conference of High Contracting Parties in accordance with the purposes specified is not incompatible with the peace process but provides a powerful support for peace in the region. It is inconceivable that real peace could be established without being based on international law and on the respect of the parties for the rules of international law. Real peace necessitates recognition of the Palestinian territories as occupied territories and respect by Israel, the occupying military Power, for the provisions of the Geneva Convention and an end to systematic violations of the rights and property of Palestinians. The High Contracting Parties truly wished to support the faltering progress of peace, to have the provisions of the Convention applied as law, to adhere firmly to the rules of international law, to ensure an end to violations of human rights and to take all available steps to achieve that end.

6. The stand of Israel and the United States against the convening of the Conference is a manifest absurdity; it constitutes an attempt to undermine the international will and implies a blatant incitement to violate the provisions of international humanitarian law. At a time when the international community is claiming that the situation in the Occupied Palestinian Territory is very grave and that it is unthinkable to pass it over in silence, and when responsibility falls on the international community, represented by the States Parties to the Geneva Convention, to put an end to it, the United States of America wishes to adopt a position contrary to the international will which serves merely to perpetuate Israel's violations of the provisions of the Convention, its war crimes and its threats to international peace and security.

The convening of the Conference of the High Contracting Parties to the Fourth Geneva Convention of 1949 is of the highest importance and should prompt all of us to endeavour to mobilize support for the Conference since it implies the enforcement of international law and of the essential conditions for true peace in the region.

For this reason, the Arab Lawyers Union calls on all the High Contracting Parties, and on the Arab and Islamic States, and on international, regional and local non-governmental organizations to take a firm stand in favour of the convening of the international Conference at the specified time and to make it a success.

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There are various issues worthy of consideration during inquiry into the applicability of Geneva law and other laws of armed conflict to protection of civilians in the West Bank, Gaza and East Jerusalem during the last several decades, especially since the 1967 war. Among these are whether the 1949 Geneva Conventions[1] and the 1977 Protocols thereto[2] and other laws of armed conflict are generally applicable; if so, what portions of Geneva law and other laws of armed conflict are applicable; who is protected by such law; what sort of protections pertain; and what sort of sanctions are possible.

I. Generally applicable laws

A. Hague regulations

I agree with apparently all States, the International Military Tribunal at Nuremberg, the International Criminal Tribunal for Former Yugoslavia (ICTY), the United Nations Secretary-General and the Israeli courts that the Regulations Annexed to the 1907 Hague Convention No. IV Respecting the Laws and Customs of War on Land[3] are a part of customary international law.[4] As such, their provisions represent binding obligations on all States and persons. The most pertinent portions of the Hague Regulations are articles 42-56, which apply to occupied territory. As customary international law applicable to occupied territory, these provisions apply to the territories occupied by Israel within the meaning of customary international law reflected in article 42 of the annex to the 1907 Hague Convention, which states: "Territory is considered occupied when it is actually placed under the authority of the hostile army." These territories include the West Bank, Gaza and East Jerusalem,[5] since they were placed under the actual authority of the Israeli Defence Forces (IDF) soon after the start of the 1967 war, which was clearly an armed conflict of an international character (to which both the 1907 Hague Convention and the 1949 Geneva Conventions apply[6]).

B. Geneva law

The Geneva Civilian Convention also applies to the Israeli-occupied territories. The applicability of the Geneva Civilian Convention to the West Bank, the Gaza Strip and East Jerusalem has been affirmed by the United Nations,[7] the International Committee of the Red Cross (ICRC)[8] and the vast majority of States.[9]

The Israeli Government ratified the Geneva Civilian Convention on 10 April 1951, but from the beginning of the 1967 military occupations profoundly different interpretations were expressed by Israel's Government and ICRC (and most States) concerning the applicability of the Geneva law to the Israeli-occupied territories. Israel's position was and continues to be that the wording of the Geneva Civilian Convention did not lead to its applicability to every situation of belligerent occupation, specifically not to territory that had not been under the sovereignty of another High Contracting Party.[10] On the other hand, Israel has stated repeatedly that the "humanitarian provisions" of the Convention would be observed.[11] I have been unable to locate any formal official Israeli statement as to the precise nature of these humanitarian provisions, but the entire Convention is held by ICRC, the United Nations Secretary-General, the ICTY and apparently all States to be a part of the customary humanitarian law of war.[12] Nonetheless, when questioned in 1989 by members of the International Commission of Jurists' Mission of Inquiry into the Israeli Military Court System in the Occupied West Bank and Gaza, the Advocate General of the Israeli Defence Forces (IDF) admitted that articles 47-78 of the Geneva Civilian Convention are among its relevant "humanitarian provisions" and he added that these were being applied or complied with by the IDF.

It appears obvious that territory not belonging to a State but newly controlled and occupied by its armed forces during an armed conflict of an international character is "occupied" territory within the meaning of customary international law. In the situation under consideration, even if the West Bank, the Gaza Strip and East Jerusalem had been merely areas occupied by other States prior to the 1967 war, when newly occupied by Israel, they would still be occupied territories within the meaning of both customary international law and the Geneva Civilian Convention, which itself reflects customary humanitarian law. Further, customary international law is a necessary background for interpretation of any treaty.[13] Thus, the customary meaning of occupied territory is at least the presumptive meaning of such a phrase used in the Geneva Conventions.

The second paragraph of article 2 of the Geneva Civilian Convention does not pose ownership as a stated qualification where reference is made to "territory of a High Contracting Party".[14] Paragraph 2 may thus include occupied territory of such a party, and perhaps territorial possessions, trust territories, administered territory, or a mandated territory.[15] For these reasons, whether or not portions of the West Bank, for example, were owned by Jordan, if they had been territory under the control of Jordan in any of the abovementioned ways they were "territory of a High Contracting Party" (Jordan) within the meaning of article 2, paragraph 2. More importantly, the second paragraph of article 2 (with or without any supposed distinction among territories) is merely an alternative to paragraph 1 of article 2, either of which acts as a threshold "for the entry into force of the Convention".[16] As Pictet noted in his authoritative comment, the second paragraph "was intended to fill the gap left by paragraph 1" and "does *not* refer to cases in which territory is occupied during hostilities... [but] only refers to cases where the occupation has taken place...without hostilities".[17] With respect to "territory...occupied during hostilities," he added, "in such cases the Convention will have been in force since the outbreak of hostilities...and *any occupation* carried out in wartime is covered by paragraph 1."[18] Stressing that "[n]o loophole is left," Pictet noted further: "In *all* cases of occupation, whether carried out by force or without meeting any resistance, the Convention becomes applicable to individuals."[19]

It should also be noted that there is no distinction in the Geneva Civilian Convention between hostilities (or belligerent occupations) that are defensive or offensive, just or unjust, non-aggressive or aggressive.[20] It is also important to note that it is the applicability of such international laws governing occupation that authorizes certain powers for the occupying forces that they would not otherwise possess.[21] If rights of the population are not legally effective, then it cannot be that the exercise of occupying Powers is legally permissible or effective. Legally, the two must coincide. They reflect a complimentarity of purpose and legal policies at stake.[22]

It has been asserted that "it has from the very first been the declared policy of the State of Israel that its military and civil organs abide by the humanitarian provisions of the Hague Regulations and the Fourth Geneva [Civilian] Convention of 1949 as if they were binding and applicable. And whenever the question arose in the courts of Israel...the position invariably taken by the Government and by the military commanders was that those provisions of the Hague Regulations and of the Geneva Convention should be followed."[23] Furthermore, the Israeli General Staff Order No. 33.0133 (20 July 1982) commands that "All IDF soldiers are required to act in accordance with the provisions included in" the Geneva Conventions.[24] It therefore appears that all Israeli military personnel are under orders to comply with and to assure compliance with articles 47-78 of the Geneva Civilian Convention and that they are not to take any action inconsistent with the provisions of that instrument.

Israeli courts have also applied provisions of the Geneva Civilian Convention as standards authorizing certain powers exercised by Israel in the occupied territories,[25] but, illogically, several Israeli courts have refused to apply rights under the Geneva Civilian Convention.[26]

In view of what has been noted above, Israel also appears to be estopped to deny the applicability of the humanitarian law of war as laid down in both the Hague Regulations and the Geneva Civilian Convention.[27]

Certain other international legal instruments are worth mentioning because they repeat or reinforce the standards laid down in the Hague Regulations and the Geneva Civilian Convention for belligerent occupation (even though Israel is not a party to all of the agreements in question). Among these additional instruments are the Universal Declaration of Human Rights,[28] now regarded by many commentators as having acquired the status of customary international law and, at a minimum, as identifying and clarifying the basic human rights norms referred to in obligations set forth in articles 55 (c) and 56 of the Charter of the United Nations[29] (which Israel has ratified); the International Covenant on Civil and Political Rights[30] (which Israel had signed but not ratified by 1989,[31] but has now ratified); the 1969 American Convention on Human Rights[32]; the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms;[33] the 1981 African (Banjul) Charter on Human and Peoples' Rights;[34] and the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of which Israel is not a party, but which commentators and judges now consider mostly to reflect customary international law binding on all humankind.[35]

While it is true that Israel has not become a party to all of the above international agreements, their relevant provisions, especially when they coincide, represent international standards by which many aspects of the occupation can be evaluated. At a minimum they are useful juridic aids for interpreting the evolving content of custom and the guarantees of the Geneva Conventions and human rights guaranteed to all persons by the Charter of the United Nations. Of course, human rights law is applicable in time of relative peace as well as armed conflict,[36] and is applicable in all territories.

II. Applicable portions of humanitarian law

Applicable portions of humanitarian law would include the Hague Regulations, portions of the Geneva Civilian Convention, and other customary international law concerning occupied territory. Thus, articles 42-56 of the annex to the 1907 Hague Convention No. IV are applicable. Because common article 3 of the 1949 Geneva Conventions is customary international law providing a minimum set of rights for all persons who are "taking no active part in the hostilities", either in an international or internal armed conflict or occupation,[37] such minimum guarantees and obligations are also applicable. With respect to the Geneva Civilian Convention, Part II of the Convention can apply to certain persons in any territory, and certain persons are protected by the provisions in Part III of the Convention, as noted in the next section.

Article 6 of the Geneva Civilian Convention also states:

> "The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2 ...
>
> "In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 61 to 77, 143.[38]
>
> "Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention."

However, the 1907 Hague Regulations and other customary international legal norms apply in full during continued occupation.[39] Of course, human rights law also applies at all relevant circumstances.

III. Persons protected

The persons protected by humanitarian law in occupied territory generally include all persons found within such territory. The Hague Regulations and most other customary legal norms make no distinction based on the nationality of persons found within such territory. The Geneva Civilian Convention, however, contains some articles that will not apply to nationals of the occupying Power. It should be emphasized that common article 3 of the Geneva Conventions has become part of customary international law applicable as a minimum set of protections in both international and internal armed conflicts as well as during armed occupation and protects all "[p]ersons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause."[40] Thus, common article 3 can apply to certain co-nationals of the occupying Power as well as co-nationals of the occupied.

Article 4 of the Geneva Civilian Convention states that "[p]ersons protected by the Convention are those who...[are] in the hands of a Party to the conflict or occupying Power of which they are not nationals," and thus contains an exclusion of some coverage with respect to co-nationals of a party to the conflict or an occupying Power. However, article 4 expressly recognizes that "[t]he provisions of Part II are, however, wider in application, as defined in article 13," and article 13 expressly states that the provisions of Part II of the Convention "cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on...nationality..." Thus, Part II of the Geneva Civilian Convention can expressly apply to co-nationals of any party to an international armed conflict.[41] Persons entitled to special protections under Part II of the Convention include: wounded and sick, the infirm, expectant mothers, all "persons exposed to grave danger",[42] and "children under fifteen who are orphaned or are separated from their families as a result of the war".[43]

Quite clearly, persons who are not nationals of Israel who were or are found within territories occupied by Israel are protected under humanitarian law. Even some Israeli nationals found within occupied territory would be entitled to certain protections against Israeli conduct under common article 3 and Part II of the Geneva Civilian Convention.

IV. Types of protection and specially noted violations

A. General protections

The types of rights and related prohibitions under humanitarian law that apply in occupied territory are too numerous to list in a short paper. It should be recalled that common article 3 of the Geneva Conventions, applicable both to Israelis and Palestinians, provides a minimum set of guarantees. Article 3 expressly recognizes the fundamental right, in all circumstances, to be treated humanely as well as specific prohibitions of: "(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages, (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples..."[44] Articles 27-34 of the Geneva Civilian Convention also contain several related rights and prohibitions, including the prohibition of collective penalties and reprisals addressed in the next section. Section III of Part III of the Convention adds several other specific rights and prohibitions concerning occupied territories as such. Specific rights and prohibitions concerning occupied territory can also be found in articles 43-56 of the annex to the 1907 Hague Convention No. IV.

B. Specially noted violations

1. Collective penalties

Customary international law prohibits collective punishment, that is, punishment of persons not for what they have done, but for the acts of others, for example, because they come from a group or family that contains an individual who can be subject to punishment under law. Article 50 of the annex to the 1907 Hague Convention No. IV expressly affirmed: "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of acts of individuals for which they cannot be regarded as jointly and severally responsible." The 1919 List of War Crimes prepared by the Responsibilities Commission of the Paris Peace Conference expressly affirms the customary prohibition of "[i]mposition of collective penalties."[45] Article 33 of the Geneva Civilian Convention affirms these customary prohibitions when recognizing: "Collective penalties and likewise all measures of intimidation...are prohibited," adding: "Reprisals against protected persons and their property are prohibited." Collective punishments are also prohibited under article 75 (2) (d) of Protocol I and human rights law.[46] As Pictet notes, the prohibition "does not refer to punishments inflicted under penal law,...but penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts that these persons have not committed...Responsibility is personal and it will no longer be possible to inflict penalties on persons who have themselves not committed the acts complained of."[47] The claim "one of them did the wrong; they must be punished" is tribalistic, potentially genocidal, and serves the evil of impermissible discrimination. It is in fundamental opposition to the human rights of each person to individual worth and dignity, to recognition as a person before the law, to be presumed innocent, and to be free from "inhuman or degrading treatment or punishment."

There is simply no question that, for example, the bulldozing down of the house of a Palestinian family because a son of the family was involved in throwing rocks at Israeli soldiers or burning tyres in the streets during the *intifadah* would be prohibited as a collective penalty, if not also as an illegal reprisal under article 33 of the Geneva Civilian Convention. The 1998 U.S. Country Report notes that Israeli security forces "demolish or seal the home (owned or rented) of a Palestinian suspected of terrorism without trial...Residents of houses ordered demolished have 48 hours to appeal to the area commander; a final appeal may be made to the Israeli High Court...After a house is demolished military authorities prohibit the owner from rebuilding the rubble...Israeli authorities destroyed one Palestinian home for security reasons in 1998; in 1997 they destroyed eight...In 1998, as in 1997, the Israeli Government did not allow any homes to be rebuilt or unsealed; it allowed one home to be unsealed in 1996."[48] Clearly also, such norms are violated by a Palestinian youth who is responsible for a terroristic bombing of civilians, as opposed to lawful military targets, on the streets of Tel Aviv. Again, claims of reprisal are also impermissible.

2. Deportations

Article 49 of the Geneva Civilian Convention reflects the customary prohibition of "[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory...regardless of their motive."[49] Article 147 also lists "unlawful deportation or transfer or unlawful confinement of a protected person" as a grave breach of the Convention. Similarly, the Charter of the International Military Tribunal at Nuremberg had listed "deportations and other inhuman acts done against any civilian population" as a crime against humanity,[50] as did the Charter for the International Military Tribunal for the Far East,[51] Control Council Law No. 10,[52] the 1950 Principles of the Nuremberg Charter and Judgment formulated by the International Law Commission,[53] and *Attorney General of Israel v. Eichmann*.[54] "Deportation of civilians" and "attempts to denationalize the inhabitants of occupied territory", were also listed among customary war crimes in the 1919 List of War Crimes prepared by the Responsibilities Commission.[55]

3. Infusion of one's own population into occupied territory and annexation

Article 49 of the Geneva Civilian Convention also reflects the customary prohibition of the "transfer [by the Occupying Power of] parts of its own civilian population into the territory it occupies." As Pictet notes, the relevant clause in article 49 was "intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories".[56]

A similar customary prohibition of annexation of occupied territory is reflected in articles 47 and 49. As Pictet warns:

> "...[O]ccupation as a result of war...cannot imply any right whatsoever to dispose of territory. As long as hostilities continue the occupying Power cannot therefore annex the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts.
>
> "... [A]ctions of this nature would have no effect on the rights of protected persons...
>
> "A fundamental principle emerges...: an occupying Power continues to be bound to apply the Convention as a whole even when, in disregard of the rules of international law, it claims during a conflict to have annexed all or part of an occupied territory".[57]

Similarly, article 55 of the annex to the 1907 Hague Convention recognizes that the occupying Power "shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates...," and article 46 recognizes the customary prohibition of confiscation of private property.

The United Nations General Assembly has specifically condemned the Israeli practice of creating settlements in the occupied territories as violations of the Geneva Conventions.[58] The General Assembly has also affirmed that such unlawful activity will not have legal effects due to the passage of time.[59]

Whatever occurs through peace agreement between Israel and the Palestinian people concerning the occupied territories in general, it is apparent that the central walled portion of the city of Jerusalem should be an international city.[60] Control of the ancient centre by sword or by those of one religious faith is far less acceptable today than, if it ever had been, during the Crusades or in previous human history. Today, Israelis and Palestinians have an opportunity to be more magnanimous than most before them.

4. Cruel, inhumane treatment, injury and suffering

As noted, common article 3 of the Geneva Conventions applies as a minimum set of rights. Article 3 prohibits, among other conduct, "violence to life and person, in particular...mutilation, cruel treatment and torture..."[61] and requires that all persons taking no active part in hostilities "shall in all circumstances be treated humanely..."[62] Pictet notes that Articles 27-34 of the Geneva Civilian Convention "apply equally" in occupied territories,[63] and these articles contain similar rights and prohibitions as well as more specific guarantees. Article 27 expressly affirms: "Protected persons are entitled, in all circumstances, to respect...They shall at all times be humanely treated, and shall be protected..." Article 31 commands: "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties." Wilful "torture or inhuman treatment" is also listed in Article 147 among grave breaches of the Convention.

In view of the above, the Israeli policy of using "moderate force" during interrogation of persons detained in or from occupied territories is a clear violation of customary humanitarian law.[64] Further, the claim of "necessity" for violating Geneva prohibitions is legally unacceptable.[65] Relevant human rights prohibitions of cruel, inhumane or degrading treatment or punishment are also non-derogable human rights[66] - that is, the prohibitions apply in all circumstances and despite claims of reasonable necessity. They are binding on both Israelis and Palestinians.

V. **Sanctions**

Under international law, both civil and criminal sanctions are available against any individual who violates the laws of war.[67] Every violation of the law of war is a war crime[68] over which there is universal jurisdiction[69] and responsibility.[70] There is no immunity for violations of international law, even if committed by a head of State, diplomat, or other official.[71] Further, any form of domestic immunity, amnesty, asylum, pardon, statutes of limitation, or other impunity under Israeli or other domestic law is not binding at the international level or in other domestic legal processes.[72] Thus, under international law, any tribunal might provide civil or criminal sanctions against those who have violated humanitarian law during the Israeli occupation of the West Bank, Gaza and East Jerusalem.

Those responsible can include military or civilian leaders who knew or should have known that their subordinates or others under their control had committed, were committing, or were about to commit violations of humanitarian law, had an opportunity to act, and failed to take reasonable corrective action under the circumstances.[73] Complicitous behaviour is also sanctionable,[74] and superior orders are not a defence if the recipient knew the orders were illegal or if they were manifestly illegal.[75]

Under international law, reparations can also be paid by the State which has responsibility for violations of humanitarian law. As Pictet notes: "The principle of State responsibility further demands that a State whose agent has been guilty of an act in violation of the [Geneva] Convention should be required to make reparation. This already followed from Article 3 of the Fourth Hague Convention of 1907..., which states that 'a belligerent Party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.'"[76] Further, as Geneva law affirms, no State "shall be allowed to absolve itself or any other...Party of any liability incurred by itself or by another...Party in respect of" grave breaches of the Geneva Conventions.[77] Israel and the Palestinian Authority might agree to the payment of reparations or agree to create an international commission to address appropriate reparations.

When considering future institutional arrangements, it is worth noting that common article 1 of the Geneva Conventions does not merely create a duty of all signatories to ensure respect for the Conventions, but also enhances the power of signatories to act. For example, under article 1, signatories could create an institution to facilitate more effective implementation of the Conventions. Such an institution could take the form of a permanent Geneva Conventions Commission or a special ad hoc Commission.[78]

VI. Conclusion

In conclusion, there is no question that humanitarian law is applicable to the territories occupied by Israel in the West Bank, Gaza and East Jerusalem, as well as relevant human rights law. It is also apparent that several violations of such law have occurred at various times during the occupation, and that both civil and criminal sanctions for such infractions are possible.

Notes

[1] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287 [hereinafter Geneva Civilian Convention].

[2] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, 8 June 1977 [Protocol I]; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts, 8 June 1977 [Protocol II].

[3] Done 18 October 1907, Treaty Series No. 538; 2 Malloy, Treaties 2259.

[4] *See, e.g.*, JORDAN J. PAUST, M. CHERIF BASSIOUNI, *ET AL.*, INTERNATIONAL CRIMINAL LAW 4, 716 (Opinion and Judgment of the International Military Tribunal at Nuremberg (1946)), 764 (Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993), U.N. Doc. S/25704, at paras. 35 & 41 (3 May 1993)), 825, 968-69, 975, 991 (ICTY) (1996); R. SHEHADEH, OCCUPIER'S LAW - ISRAEL AND THE WEST BANK xiii & n.9 (rev. ed. 1988); Arie Pach, *Human Rights in West Bank Military Courts*, 7 ISRAEL Y.B. ON HUMAN RTS. 222, 228-29 (1977); *Jamayat Askhan al-Ma'alim v. The IDF Commander in Judea and Samaria Region*, P.D. 37 (4) 785, 793 (Israel High Court of Justice, 1982, H.C. 393/82); *Dvikat v. Government of Israel*, P.D. 34 (1) 1 (H.C. 390/79, 61/80); *Ayob v. Minister of Defence*, P.D. 33 (2) 113, 120 (H.C. 606/78, 610/78); *Hilu v. Government of Israel*, P.D. 27 (2) 169, 180 (H.C. 302/72, H.C. 306/72); *The Attorney General v. Sylvester*, 1 Psakim Elionim 513 (S. Ct. of Israel, Cr. App. 1/48).

Substantial portions of this section and section B are borrowed from the report of the International Commission of Jurists' Mission of Inquiry into the Israeli Military Court System in the Occupied West Bank and Gaza of 1989, *reprinted in* 14 HASTINGS INT'L & COMP. L. REV. 1 (1990) (prepared by the author and Professor Gerhard von Glahn and Judge Gunter Woratsch, then President of the International Association of Judges).

[5] *See, e.g.*, U.N. G.A. Res. ES-10/6 (9 Feb. 1999); U.N. G.A. Res. ES-10/5 (17 March 1998); U.N. G.A. Res. ES-10/2 (25 April 1997).

[6] *See, e.g.*, PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 970-71, 975-76, 980.

[7] *See, e.g.*, U.N. S.C. Res. 607 (5 Jan. 1988) (which affirmed that the Geneva Civilian Convention was applicable to Palestinian and other Arab territories occupied by Israel since 1967, including East Jerusalem); U.N. G.A. Res. ES-10/6 (9 Feb. 1999); U.N. G.A. Res. ES-10/5 (17 March 1998); U.N. G.A. Res. ES-10/4 (13 Nov. 1997); U.N. G.A. Res. ES-10/3 (15 July 1997); U.N. G.A. Res. ES-10/2 (25 April 1997); U.N. G.A. Res. 3092 (1973); and statement of United Nations Secretary-General Javier Perez de Cuellar (29 June 1989), in which he referred to the deportation of eight Palestinians from occupied areas as "a clear violation of the Fourth Geneva Convention", Jerusalem Post, 30 June 1989, at 1. *See also* George E. Bisharat, *Palestine and Humanitarian Law: Israeli Practice in the West Bank and Gaza*, 12 HASTINGS INT'L & COMP. L. REV. 325, 340, 343-44 (1989), and references cited.

[8] *See, e.g.*, ICRC, ANNUAL REPORT 233, 235, 237 (Geneva 1996); ICRC, ANNUAL REPORT 83-84 (Geneva 1987); ICRC, THE ICRC WORLDWIDE 1988, at 18 (Geneva 1989); ICRC, BULLETIN NO. 160, at 1 (Geneva, May 1989).

[9] *See, e.g.*, U.S. Dep't of State, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1998, The Occupied Territories, 1 (Feb. 1999) ("Israel occupied the West Bank, Gaza Strip, Golan Heights, and East Jerusalem during the 1967 War...The international community considers Israel's authority in the occupied territories to be subject to the Hague Regulations of 1907 and the 1949 Geneva Convention relating to the Protection of Civilians in Time of War. The Israeli Government considers the Hague Regulations applicable and states that it observes the Geneva Convention's humanitarian provisions.") [hereinafter 1998 U.S. COUNTRY REPORT]; also at www.state.gov/www/global/humanrights/1998 hrp report/occterr.html; U.S. Dep't of State, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR1988 (Feb. 1989) [hereinafter 1989 U.S. COUNTRY REPORT]; *see also* the 1987 edition of the same publication, at 1189, where the U.S. Department of State had asserted that the United States "recognizes Israel as an occupying Power" and in consequence considers its rule in the territories "to be subject to the Hague Regulations of 1907 and the 1949 Fourth Geneva Convention..." *See also* 61 DEP'T OF STATE BULLETIN 76 (U.S., 28 July 1969).

[10] *See, e.g.*, MEIR SHAMGAR, LEGAL CONCEPTS AND PROBLEMS OF THE ISRAELI MILITARY GOVERNMENT: THE INITIAL STAGES 13, 32-33; MILITARY GOVERNMENT IN THE TERRITORIES ADMINISTERED BY ISRAEL 1967-1980, THE LEGAL ASPECTS (M. Shamgar ed. 1982); Bisharat, *supra* note 7, at 337, 339.

[11] *See, e.g.*, Meir Shamgar (then Attorney-General of Israel), *The Observance of International Law in the Administered Territories*, 1 ISRAEL Y.B. ON HUMAN RTS. 262 (1971).

[12] *See, e.g.*, PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 764 (U.N. S.G.), 824 (ICTY), 969, 991 (ICTY).

[13] *See, e.g.*, Vienna Convention on the Law of Treaties, art. 31 (3) (c), 1155 U.N.T.S. 331; JORDAN J. PAUST, INTERNATIONAL LAW AS LAW OF THE UNITED STATES 8, 48, 50, 368, 383 (1996).

[14] Paragraph 2 of article 2 reads: "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."

[15] *See also* INTERNATIONAL REVIEW OF THE RED CROSS 426-427 (Aug. 1970) ("where a territory under the authority of one of the parties passes under the authority of an opposing party, there is 'occupation' within the meaning of Article 2"); Bisharat, *supra* note 7, at 337-338 & nn.69; Yoram Dinstein, *Judgment of Pithat Rafiah*, 3 EYUNAI MISHPAT (Legal Studies) 934, 938 (1978) (Geneva Civilian Convention is not contingent on recognition of property rights).

[16] See JEAN PICTET, IV COMMENTARY, GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 21 (1958) [hereinafter IV PICTET].

[17] *Id.* at 21-22 (emphasis added).

[18] *Id.* (emphasis added). *See also id.* at 22 (application "to territories which are occupied at a later date, in virtue of...a capitulation...[follows] from paragraph 1.").

[19] *Id.* at 60 (emphasis added). *See also* Bisharat, *supra* note 7, at 338.

[20] *See, e.g.*, Geneva Civilian Convention, arts. 1 ("undertake to respect and to ensure respect for the present Convention in all circumstances"), 2 ("shall apply to all cases of declared war or of any other armed conflict which may arise"); *see* IV PICTET, *supra* note 16, at 13-17; PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 970-71. The norms are not merely contractual or of an ordinary nature, but are *obligatio erga omnes* binding on all signatories and all of humankind. *See* PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 5, 13, 75, 79, 756.

[21] *See, e.g.*, U.S. DEPARTMENT OF ARMY PAMPHLET NO. 27-161-2, II INTERNATIONAL LAW 159, 165, 169 (1962). These powers include the power to operate a military justice system.

[22] *See generally* MYRES S. MCDOUGAL, FLORENTINO P. FELICIANO, LAW AND MINIMUM WORLD PUBLIC ORDER 739-41, 745-46, 766-67, 790-91, 793-94, 796-800, 808 (1961); GERHARD VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY: A COMMENTARY ON THE LAW AND PRACTICE OF BELLIGERENT OCCUPATION 33-34 (1957).

[23] *See* H. Cohn, forword, in THE RULE OF LAW IN THE AREAS ADMINISTERED BY ISRAEL vii-viii (Israel National Section of the International Commission of Jurists, 1981); *see also id.* at 1; Shamgar, *supra* note 11; ISRAEL (SECURITY) PROCLAMATION NO. 3, art. 35 (1967); 1989 U.S. COUNTRY REPORT, *supra* note 9. *See also infra* notes 25-26; *but see Hilu v. Government of Israel*, P.D. 27 (2) 169, 180 (H.C. 302/72, 206/72).

[24] Section 3, *quoted in* Hillel Somer, *The Application of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, as Israeli Law*, 11 EYUNAI MISHPAT (Legal Studies) 263 (1986). Somer quoted the Chief Military Advocate of the IDF as stating: "The Geneva Convention is one of the orders of the army and its provisions have been adopted in...appendix 61 of the general staff orders." *Id.* at 268.

[25] *See, e.g., Military Prosecutor v. Halil Muhamed Halil Bakhis and Others*, Israel Military Court in Ramallah (1968), 47 INT'L L. RPTS. 484, 485-86 (1974); *Military Prosecutor v. Raid Salman el Hassan el Hatib*, Israel Military Court in Ramallah (1968), 47 INT'L L. RPTS. 487, 488-89 (1974), *quoted in* Israel National Section of the I.C.J., *supra* note 23, at 28. *See also Abu Awad v. The Regional Commander of Judea and Samaria*, P.D. 33 (3) 309 (H.C. 97/79); Yehuda Z. Blum, *The Missing Reversioner: Reflections on the Status of Judea and Samaria*, 3 ISRAEL L. REV. 279, 280-81 (1969). *But see Jerusalem Region Electricity Co. v. The Minister of Energy*, P.D. 35 (2) 673 (H.C. 351/80), and *Dvikat v. Government of Israel*, P.D. 34 (1) 1, 29 (H.C. 390/79).

[26] *See, e.g., Ibrahim Sagidia and Others v. Minister of Defence*, Israel High Court of Justice, 258/88, App. H. Ct. J. 323/88; *Suliman v. Minister of Defence*, Israel High Court of Justice, P.D. 33 (2) 113 (1979); *Military Prosecutor v. Halil Muhamed Halil Bakhis and Others*, *supra* note 25, 47 INT'L L. RPTS. at 486. *See also* the *Jamyat Askham al-Ma'alim* case, *supra* note 4, at 793, and *Dvikat v. Government of Israel*, P.D. 34 (1) 29 (H.C. 390/79), opinion of Witkon, J.: the Geneva Civilian Convention "does apply...even though it is not within the jurisdiction of this court" as mere treaty law not based also on legislation. *See also Qawassmah et al. v. Minister of Defence*, P.D. 35 (1) 617, 627 (H.C. 698/80), in which Cohen, J. attempted in his dissent to apply article 49 of the Geneva Civilian Convention as part of customary international law.

[27] On estoppel, *see generally* French Nuclear Test Case (*Australia v. France*), [1974] I.C.J. 253, 268, 457, 473; Case of the Temple of Preah Vihear (*Cambodia v. Thailand*), [1962] I.C.J. 6, 23, 31-32, 42, 61-65; *see also* Eastern Greenland Case (*Denmark v. Norway*), P.C.I.J., Ser. A/B, No. 53, at 71 (1933) (unilateral declaration).

[28] G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948).

[29] *See, e.g.*, PAUST, BASSIOUNI, *ET AL*, *supra* note 4, at 390, 505, 756; MYRES S. MCDOUGAL, HAROLD D. LASSWELL, LUNG-CHU CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER 272-74, 302, 325-27 (1980); PAUST, *supra* note 13, at 181, 191, 198, 228, 245-46, 256; Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287 (1995/96); W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT'L L. 866, 867 (1990).

[30] 999 U.N.T.S. 171 (1966).

[31] Israel, as a signatory awaiting formal ratification, must take no action inconsistent with the main purposes of a treaty. *See, e.g.*, Vienna Convention on the Law of Treaties, *supra* note 13, art. 18. One of the main purposes of a human rights treaty obviously is to assure the protection of human rights, and a signatory, at a minimum, must not itself deny such rights or allow their violation.

[32] O.A.S. T.S. No. 36, at 1, O.A.S. Off. Rec. OEA/Ser. L/V/II.23 doc. rev. 2.

[33] 213 U.N.T.S. 222, Eur. T.S. No. 5 (1950).

[34] O.A.U. Doc. CAB/LEG/67/3 Rev. 5 (1981).

[35] *See, e.g.*, PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 969, 981, 991 (ICTY, Opinion of Judge Sidhwa); W.T. MALLISON, THE PALESTINIAN PROBLEM IN INTERNATIONAL LAW AND WORLD ORDER 400 n.437 (1986); panel, *Customary International Law and Additional Protocol I to the Geneva Conventions for Protection of War Victims*, 81 PROC., AM. SOC. INT'L L. (1987) (remarks of: Meron, Carnahan, Matheson). The International Criminal Tribunal for Former Yugoslavia has held that the "core" of Protocol II is also customary international law. See PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 833 (*The Prosecutor of the Tribunal v. Dusko Tadic*, Appeals Chamber (2 Oct. 1995)); concerning Protocol II, see also *id.* at 981, 991.

[36] *See, e.g.*, PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 968, 980, 1024, 1115.

[37] *See, e.g.*, *id.* at 827-30 (ICTY, *The Prosecutor v. Tadic*, Trial Chamber (10 Aug. 1995), noting especially the same recognition by the ICJ in *Nicaragua v. United States*, 1986 ICJ 4, at paras. 218, 255), 976, 980-81, 986, 991-93 (ICTY recognition that common article 3 violations are war crimes).

[38] Pictet adds: "It must be remembered...that Articles 27-34...apply equally to this Section [Section III of Part III on 'Occupied Territories'] and to the Section dealing with aliens in the territory of a belligerent." IV PICTET, *supra* note 16, at 272.

[39] *See, e.g.*, PAUST, BASSIOUNI, *ET AL.* *supra* note 4, at 971; U.S. DEPARTMENT OF ARMY FIELD MANUAL 27-10, THE LAW OF LAND WARFARE 8-9, para. 10 (d) (1956).

[40] Geneva Civilian Convention, art. 3.

[41] *See, e.g.*, PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 976, 980-81, 1020.

[42] Geneva Civilian Convention, art. 16.

[43] *Id*. art. 24.

[44] Concerning the powers, rights and prohibitions relevant to operation of the Israeli Military Court System in occupied West Bank and Gaza, *see, e.g.*, Report of the ICJ Mission, *supra* note 4, at 5-66; 1998 U.S. COUNTRY REPORT, *supra* note 9, at 6-7, 9-12.

[45] Crime number 17, *reprinted in* PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 24; on collective penalties, see also *id*. at 29-30, 49, 73, 1017, 1024, 1395.

[46] *See, e.g.*, PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 29-30.

[47] IV PICTET, *supra* note 16, at 225; see also *id*. at 228 (re: reprisals and collective penalties).

[48] 1998 U.S. COUNTRY REPORT, *supra* note 9, at 13-14. *See also* 1996 ICRC ANNUAL REPORT, *supra* note 8, at 233-34 ("the IDF, citing security reasons, destroyed nine houses belonging mainly to families of suicide bombers. This was in contravention of the Convention, which prohibits destruction of real or personal property, except where such destruction is rendered absolutely necessary by military operations."); U.S. Dep't of State, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1997, The Occupied Territories, 13 (Jan. 1998) ("Israeli authorities destroyed eight Palestinian homes in 1997, compared with eight in 1996, and one in 1995. In Surif four homes were demolished. In Assira Shamaliyya, two homes were demolished and two filled with concrete.").

[49] See also IV PICTET, *supra* note 16, at 278-80; Secretary-General Perez de Cuellar, *supra* note 7.

[50] Article 6 (b), Charter of the IMT at Nuremberg (1945); see also Opinion and Judgment of the IMT at Nuremberg, Count Four, section A (1946) (deportation and other inhumane acts).

[51] Article 5 (c), Charter of the IMT for the Far East (1946) (deportation).

[52] Article II (1) (c) (1945).

[53] Principle VI (c), 5 U.N. GAOR, Supp. No. 12, at 11-14, U.N. Doc. A/1316 (1950) (deportation).

[54] (S. Ct. of Israel, 1962), *reprinted in* 36 INT'L L. RPTS. 277 (1968) (deportation and expulsion).

[55] Crimes numbers 7 and 12, *reprinted in* PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 24.

[56] IV PICTET, *supra* note 16, at 283.

[57] *Id*. at 275-76.

[58] *See, e.g.*, U.N. G.A. Res. ES-10/6 (9 Feb. 1999) and other U.N. G.A. ES resolutions listed *supra* note 7.

[59] *See, e.g.*, *id*.

[60] See also U.N. G.A. Res. ES-10/2 (25 April 1997) ("Reaffirming that the international community…has a legitimate interest in the question of the City of Jerusalem and the protection of the unique spiritual and religious dimension of the City…").

[61] Geneva Civilian Convention, art. 3 (1) (a).

[62] *Id.*, art. 3 (1).

[63] See IV PICTET, *supra* note 4, at 272.

[64] See also 1998 U.S. COUNTRY REPORT, *supra* note 9, at 3 ("Israeli security forces abused, and in some cases tortured, Palestinians suspected of security offenses. Human rights groups and lawyers say that abuse and torture is widespread and that Israeli security officials use a variety of methods designed to coerce confessions that threaten prisoner's health and inflict extreme pain, including the use of violent shaking."), 6-7 (same, adding: "Interrogation sessions are long and severe, and solitary confinement is used frequently for long periods...Common interrogation practices include hooding; forced standing or squatting for long periods of time; prolonged exposure to extreme temperatures; tying or chaining the detainee in contorted and painful positions; blows and beatings with fists, sticks, and other instruments; confinement in small and often filthy spaces; sleep and food deprivation; and threats against the detainee's life or family...The International Committee of the Red Cross (ICRC) declared in 1992 that such practices violate the Geneva Convention. Human rights groups and attorneys challenged the use of 'special measures,' especially shaking, before the Israeli High Court a number of times during the year. In each case, the court either rejected the petition or ruled in favor of the GSS.").

[65] *See, e.g.*, IV PICTET, *supra* note 16, at 34, 37, 39, 47, 200-202, 204-205, 207; PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 995, 1010.

[66] *See, e.g.*, International Covenant on Civil and Political Rights, arts. 4 (2), 7; African [Banjul] Charter on Human and Peoples' Rights, art. 5; American Convention on Human Rights, arts. 5, 27 (2); European Convention on Human Rights, arts. 3, 15 (2). The RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES ? 702 (d) (3 ed. 1987) also lists this prohibition as customary *jus cogens*. See also General Comment adopted by the Human Rights Committee under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, addendum, Hum. Rts. Comm., General Comment No. 24 (52), paras. 7-9, 11-12, 18, at 3-5, 8, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec. 1984, 39 U.N. GAOR, Supp. No. 51, at 197, U.N. Doc. A/39/51.

[67] On civil sanctions, *see, e.g.*, PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 45, 96, 102, 110, 114, 249-52, 801-02, 1021-22, *passim*; Jordan J. Paust, *Suing Karadzic*, 10 LEIDEN J. INT'L L. 91 (1997); *Suing Saddam: Private Remedies for War Crimes and Hostage-Taking*, 31 VA. J. INT'L L. 351 (1991); *Kadic v. Karadzic*, 70 F.3d 232, 239-40, 242-43 (2d Cir. 1995); *Linder v. Portocarrero*, 963 F.2d 332, 336-37 (11th Cir. 1992).

[68] *See, e.g.*, PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 24-25, 85-86, 826, 969, 984, 993.

[69] *See, e.g.*, *id.* at 74-75, 95-103, *passim*.

[70] *See, e.g.*, *id.* at 74-78; U.N. G.A. Res. 3074, 28 U.N. GAOR Supp. No. 30, at 78, U.N. Doc. A/9030 (1973); U.N. G.A. Res. 2840, 26 U.N. GAOR, Supp. No. 29, at 88, U.N. Doc. A/8429 (1971); U.N. G.A. Res. 96, U.N. Doc. A/64, at 188 (1946) (re: genocide); Jordan J. Paust, *Universality and the Responsibility to Enforce International Criminal Law: No U.S. Sanctuary for Alleged Nazi War Criminals*, 11 HOUS. J. INT'L L. 337 (1989).

[71] *See, e.g.*, PAUST, BASSIOUNI, *ET AL.*, *supra* note 4, at 21-23, 25, 32-41, 43, 46, 53, 60-72, 78, 108-111, 707-708, 811-812, 833-844, 861, 889-897, 984, 986, 1395-1396. Non-immunity under international law exists with respect to both civil and criminal sanctions.

[72] *See, e.g.*, *id.* at 21, 75-76, 78, 80-81, 108.

[73] *See, e.g.*, *id.* at 22-23, 32-41, 43-45, 49-52, 60-72, *passim*.

[74] *See, e.g.*, *id*. at 21-29, 60.

[75] *See, e.g.*, *id*. at 23, 1361-1376.

[76] See IV PICTET, *supra* note 16, at 210; see also *id*. at 211, 602-603; U.S. DEP'T OF ARMY PAMPHLET NO. 27-161-1, I INTERNATIONAL LAW 84-86 (1964).

[77] *See, e.g.*, Geneva Civilian Convention, art. 148. No such agreement is legally binding on any other State, entity, or individual.

[78] See also Jordan J. Paust, *An International Structure for Implementation of the 1949 Geneva Conventions: Needs and Function Analysis*, 1 YALE STUDIES IN WORLD PUBLIC ORDER 148, 176-217 (1974) (with a draft Geneva Covenant on Convention Implementation for the establishment of a Commission on Human Rights in Armed Conflict (CHRAC) with a Council of Ministers, High Commissioner, and Hearings and Arbitration Council).

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Personal notice

Two days ago an Israeli friend who was supposed to participate in this Panel asked me why am I travelling to Cairo to lecture about the Israeli violation of the Fourth Geneva Convention, after the Oslo Agreement and the peace process?

My answer was

1. The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza strip did not change the status of these areas as occupied territories.

2. East Jerusalem was annexed by Israel and remains under her full control.

3. The so-called "C" area in the West Bank was under full control of Israel.

4. The so-called "B" area in the West Bank was still under security control of the Israeli's.

5. The problem of settlements and military locations.

   Article 17 (4) of the Interim Agreement states:

   "Israel, through its military government, has the authority over areas that are not under the territorial jurisdiction of the Council, powers and responsibilities not transferred to the Council and Israelis.

   "To this end, the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities in accordance with international law. This provision shall not derogate from Israel's applicable legislation over Israelis in personam."

A small story

In 1948, according to article 125 of the Defence Emergency Regulations of 1945, Israel declares all the Palestinian towns and villages (inside Israel) closed areas, no one could leave these areas without a written permission from the Israeli military governor. (Another regulation, the Emergency Regulation (Security Zone) of 1948, was used for the same purpose.)

For four years, Israel refused to give such permissions to Palestinian farmers so they could leave their homes to go to their land to cultivate it.

In the same year (1948), Israel issued another emergency regulation concerning the cultivation of waste lands (valid until 1984). According to this regulation, any agricultural land which was not cultivated for at least three years, the Israeli Government has the right to transfer possession of the land to a third party who could cultivate the land. Israel transferred around 1.2 million dunums from Palestinian (Israeli citizens) to Jewish kibbutzim and moshavim.

1952: The Land Acquisition (validation of acts and compensation) Law was legislated in the Israeli parliament, the Knesset. According to this law, the 1.2 million dunums were declared state land and the ownership of these lands was transferred from their original Palestinian-Israeli citizens to the State of Israel for the use of Jews only.

Conclusions from this story

Whenever Israel wants to violate any international law or any human or basic right, Israel would try to do it according to its local law or it will give the international law an interposition, suiting its legal position, as I will explain in this paper entitled "Violations by Israel, the occupying Power, of the provisions of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem".

Annexation

On 28 June 1967, the Municipalities Ordinance (Amendment No. 6) Law was legislated by the Israeli Knesset. According to it, the boundaries of the Israeli city of Jerusalem were extended to include the occupied Palestinian city of East Jerusalem and several villages around this city (70,000 dunums were annexed). After this annexation, the Israeli law was enacted in these areas, and Israel treats this area as an "integral part" of the State of Israel.

On 30 July 1980, the basic law in Jerusalem, the capital of Israel, was legislated. This law declared that the areas annexed to Israel in 1967 are an integral part of Jerusalem, the capital of the State of Israel.

The above two laws do not use the term "annexation" and do not extend Israeli citizenship to the local population.

The act of 1980, which has been widely hailed as the final annexation of East Jerusalem, was condemned by the Security Council in resolution 478 (1980) as a "violation of international law" and declared "null and void".

No State has recognized Israel's annexation of Jerusalem.

The annexation of East Jerusalem violates three peremptory norms having the character of *jus cogens*, namely, (i) the prohibition of the acquisition of territory by force; (ii) principles of humanitarian law contained in The Hague Regulations and the Fourth Geneva Convention; and (iii) the right to self-determination.

The annexation of East Jerusalem is a violation of the Fourth Geneva Convention, mainly its articles 2, 4 and 47.

Article 47 states that "Protected persons who are in occupied territory shall not be deprived in any manner whatsoever of the benefits of the present Convention by any change introduced as the result of the occupation of a territory into the institutions or government of the said territory ... nor by any agreement concluded between the authority of the occupied territories and the occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory."

As a result of the annexation of East Jerusalem to the State of Israel and to the enforcement of the Israeli law in East Jerusalem, three major matters happened in East Jerusalem:

1. Widespread confiscation of private land was implemented, according to the local Israeli Land Acquisition (Public Use) Ordinance of 1943.

2. On this confiscated land, Israel settled around 190,000 Israelis, a large settlement of Israeli civilians in occupied East Jerusalem, without any claim from the Israeli side that these settlements were for security reasons, as Israel claimed with regard to the West Bank and Gaza settlements (violation of article 119 (6) of the Fourth Geneva Convention).

3. Transfer and deportation of inhabitants in violation of article 49 (1) of the Fourth Geneva Convention. In the mid-1980s, the Israeli Supreme Court decided in a famous case to deport Mr. Mubarak Awad, a Palestinian resident of East Jerusalem, who had travelled to the United States to study and come back with his family to East Jerusalem. As Palestinian inhabitants of East Jerusalem, they entered Israel in 1967, and as a result of the Israeli Law of Entering Israel of 1952, the law was applicable to them. According to this law, the East Jerusalem inhabitants are permanent residents of Israel. Article II of this law states that a resident will lose his residency in one of these cases: (a) if he has lived abroad for 7 years or more; (b) obtained permanent residency in other country; or (c) obtained another country's citizenship.

Some of the major Israeli violations with regard to the West Bank and Gaza Strip include the establishment of Israeli settlements and the expansion of existing settlements; confiscation and expropriation of private and public lands; evacuation, deportation, expulsion and transfer of Arab inhabitants of the occupied territories; destruction and demolition of Arab houses; mass arrests and administration detention; torture of detained persons; settling Israeli citizens in the occupied territories; and enforcing the Israeli law on Israelis living in the West Bank, including settlements.

The official Israeli position regarding the non-application of the Fourth Geneva Convention in the occupied territories can be summed up by a few principles. Israel claims that article 2 of the Geneva Convention stipulates that the Convention is to be applied to occupied territories captured from States which held sovereignty over those territories.

It argues that the territories of the West Bank and the Gaza Strip were never under Jordanian or Egyptian sovereignty. Jordan's status in the West Bank was one of an occupying State with a military government, while the Gaza Strip was, at most, under Egyptian administration.

Therefore, if Israel were to agree to the application of the Fourth Geneva Convention, it would be tantamount to Israeli recognition of Jordanian and Egyptian sovereignty over those territories.

Israel's official position has been subjected to harsh criticism which has also come from inside Israel, as for example in the opinion of Professor Yoram Dinstein.

There is not a State in the world which is ready to accept Israel's strange position with regard to the application of the Fourth Geneva Convention in the occupied territories.

In order to deflect harsh, international criticism of Israel's refusal to apply the Fourth Geneva Convention to the occupied territories for the reasons stated above, the Attorney-General of Israel declared on behalf of the Government in the course of a symposium held at Tel Aviv University that Israel had decided that, in practice, it would act in accordance with the humanitarian provisions of the Fourth Geneva Convention.

The assertion that the 'humanitarian provisions' of the Geneva Convention are applied has no real legal meaning since they are not applied automatically. They are applied only if and when the State of Israel agrees to their application and only in cases in which the prosecutor is convinced that the interpretation given by the Supreme Court to a specific provision covers the action against which the High Court of Justice has been petitioned.

It took the Supreme Court little time to formulate the position whereby the Fourth Geneva Convention is not considered part of internal Israeli law, considering it contractual rather than customary international law.

The question to be asked is: has this same provision in an international convention which we are being requested to enforce become part of the municipal law of the State whose court is being petitioned with regard to the matter; or has this provision remained an agreement among States and only States and not been been assimilated into internal municipal law?

In the first instance, we are speaking about "customary" international law recognized in municipal courts so long as there does not exist a provision of municipal law which conflicts with it, while in the second instance we are speaking about "contractual" international law, which, as previously stated, solely obliges States to one another.

The Fourth Geneva Convention, even if applicable to Israel's belligerent occupation of the West Bank, constitutes above all a constitutive convention, which does not adopt existing international customs, but generates new norms whose application by Israel demands an act of legislation.

The easiest way is the political one where Israel will declare that the Fourth Geneva Convention is applicable in the occupied territories.

As mentioned earlier, the position of the Supreme Court is clear-cut. It is opposed to the application of the Fourth Geneva Convention to the actions of the military government in the occupied territories. However in spite of this, there exist ways whereby it is possible to circumvent the practice of the Supreme Court and convince it to examine the acts of the Government in the light of the Geneva Convention.

One of the ways this can be done is through acquiring the agreement of the State Attorney to examine the actions of the military governments turning the court into a kind of arbitrator between the parties. Another way is to attempt to prove to the Supreme Court that the Fourth Geneva Convention has, to all intents and purposes, become part of customary international law, or that specific provisions such as article 49, (which prohibits deportation) have become part of customary international law, that such provisions reflect international declarative law and, in keeping with the practice of the court, should be applied.

A third way is to show that the practice of the Supreme Court, according to which the Geneva Convention cannot be applied by Israel because it is a contractual international convention, is incorrect. It can be argued that, while international conventions of a contractual nature do not automatically apply to internal Israeli law, this does not affect the application of conventions that are legislative in nature, such as the Geneva Convention. Another way is to ascertain whether the provisions of the Fourth Geneva Convention can already be considered part of internal Israeli law, under the orders of the General Staff, in particular General Staff Order No. 33.0133.

Finally, the question of whether the Geneva Convention is part of the internal law of the occupied territories should be considered, whether by means of military legislation or by legislation existing prior to 1967 on the basis of Jordan's becoming a party to the Fourth Geneva Convention in 1958.

With your permission I would like to clarify the above five ways to apply the Fourth Geneva Convention. The first option would be to apply the Convention following the agreement of the State Attorney. The very first time a petition was submitted to the High Court of Justice about an issue related to the occupied territories, the question of the application of the Geneva Convention arose. The state representative agreed to examine the actions of the area commander in the light of the Geneva Convention, arguing that the commander had acted in accordance with the Convention. State representatives have agreed to do this in every case in which the specific provisions of the Geneva Convention, as interpreted by the State of Israel, did not, in the eyes of the State, conflict with the action taken by the military government.

Even when the State Attorney agreed to the actions of the military government being judged in the light of the Geneva Convention, the Court interpreted it in a manner which validated the actions of the military government, as is readily apparent in the attitude of the Court to the provisions of articles 49 (1) and 49 (6) of the Geneva Convention, prohibiting deportations of protected persons and transfer of the occupier's own civilian population into the occupied territory, respectively.

The second option is to prove that the Geneva Convention is part of customary international law. We have already reviewed the practice of the Israeli Supreme Court according to which an Israeli court must apply customary international law, and only customary international law, as part of internal Israeli law. Customary international law expresses the international rules of conduct and does not constitute part of internal Israeli law, unless it has been adopted by special Israeli legislation, in the view of the Supreme Court. The Supreme Court also ruled that the Fourth Geneva Convention does not constitute part of internal Israeli law.

A number of international legal scholars have already expressed their view in favour of the position whereby the Geneva Convention is considered to be part of customary law. Other scholars state that, if not all the provisions of the Convention are part of customary international law, at least some specific provisions of the Convention do actually constitute norms of customary international law of which the Geneva Convention was declaratory. Likewise, the American Jewish legal scholar, Theodor Meron, argues that the Geneva Convention should not be considered a constitutive convention.

As regards the Geneva Convention, I would not question the opinion which regards it as conventional rather than customary. However, account must be taken of the fact that some provisions of the Geneva Convention are indeed declaratory of customary international law. Rather than view all the provisions of the Geneva Convention as reflecting conventional international law and therefore as non-invocable in domestic courts, it is suggested that the High Court of Justice should, in the future, examine each relevance of that Convention in order to determine whether it is declaratory of customary international law or not.

Another option is to consider the Geneva Convention as a legislative convention rather than a contractual convention. Binyamin Rubin argues that there is no practice in Israel according to which only customary international law constitutes part of internal law. In Rubin's opinion, the distinction made by the Israeli court between the Geneva Convention and The Hague Regulations is an incorrect distinction. Both laws are related to war, however, one pertains to contractual international law and the other to customary international law — whereby the latter constitutes part of the law of the country and the former does not.

Rubin concludes by saying: "In order for part of a convention to be considered law in this country, it is not enough for it to be of a legislative nature. It must also be a self-executing treaty, that is, one whose provisions can be implemented as they are, without requiring other measures arising from the convention."

On the basis of the above reasoning and the argument that follows, Rubin arrives at the conclusion that no distinction should be drawn between the Geneva Convention and customary international law and that, for all intents and purposes, the Fourth Geneva Convention should be considered to be part of internal Israeli law and that the Supreme Court must rule in accordance with it. In Rubin's opinion, this conclusion follows from, *inter alia,* the fact that the role of the military commander in the occupied territory was established by international law, in particular by the laws of war. Laws of war place the area commander under certain obligations, as these laws establish both the role he is required to fulfil and the limits of his power and his obligations.

The next option would be to apply the Geneva Convention as part of the orders of the General Staff. The question here is whether the humanitarian sections of the Fourth Geneva Convention, in accordance with which the Government of Israel has decided to act, do not on their own account constitute obligatory norms, and not only in part, by dint of their being part of the internal guidelines of the Government to military commanders and by dint of their being guidelines of the General Staff itself.

General Staff Order No. 33.0133 of 20 July 1982 states that discipline entails a behaviour in accordance with the conventions to which Israel is a party.

Now, from 12 August 1949, Israel has been party to the four Geneva Conventions for the protection of the victims of war. These Conventions have been published in official gazettes, under Conventions records No. 30, on 30 September 1951, and also in the "Library of Military Law - 17 - 24." Consequently, all IDF soldiers are required to act in accordance with the provisions included in the above Conventions.

The last option I would like to discuss is to consider the Geneva Convention as part of internal law in the occupied territories. As a matter of fact, the local law that was in force on the eve of the military occupation of the territories in 1967, as well as the security legislation enacted in its wake, included provisions for applying the Geneva Convention. At the beginning of the occupation of the West Bank, an order was published with regard to defence provisions that included, under article 35 the observance of the Geneva Convention: The military court and the administrators of the military court must apply the provisions of the [Fourth] Geneva Convention with respect to judicial procedures. In case of a conflict between this order and the said convention, the Convention shall be preferred.

If anyone was surprised by the existence of this article, the surprise did not last longer than a few months. In October 1967, the above mentioned article 35 was changed in an enigmatic manner by Amendment No. 9 to the Security Provisions Order No. 144, which replaced article 35 with an entirely different article on calculation of prison sentences, having nothing whatsoever to do with the Geneva Convention.

Once again, did the Fourth Geneva Convention constitute a part of local law in the West Bank prior to 1967? In my opinion, the most likely possibility is that the Fourth Geneva Convention falls under the category of agreements which do not require the approval of the Jordanian Parliament and, as such, it has constituted part of the internal Jordanian law since Jordan became a party to the Convention. Hence, this Convention was actually part of the internal law which was in force on the eve of the occupation and the government of the occupying army is obliged, in accordance with Article 43 of The Hague Regulations of 1907, to respect the existing law and to operate in accordance with it.

IV. PLENARY II
Enforcement of the Fourth Geneva Convention

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Duties and implementation with regard to article 1 of the Convention

Israel's obligation to apply the Fourth Geneva Convention in the occupied territories is not in dispute. High Contracting Parties' obligation under article 1 of the Convention to act to ensure Israel's respect of the Convention and that the obligations are discharged only once Israel complies with its obligations is equally clear. Bearing in mind the long history of Israeli violations, what is surprising is that we are only now discussing how to make article 1 enforcement work. The reasons for this are not the subject of this session. What is important is that the long-overdue enforcement of the Convention should happen immediately.

Because of Israel's repeated violations of the Convention, the United Nations General Assembly recently took the initiative in an emergency special session to ask the High Contracting Parties to call a conference where the article 1 obligation can be discharged. In other words, States were asked to meet to decide upon measures to ensure Israel's respect of the Convention.

The purpose of this session is to examine the kind of measures States can undertake to meet this obligation. I shall first consider how article 1 operates before passing onto how article 1 can be enforced.

Politics

The Geneva Conventions recognize that States operate as political bodies in the international arena. War is, after all, the most extreme of all political interactions. Nevertheless, in ratifying the Convention, States undertake to restrict their and other States' pursuit of political interests where that leads to violations of the Convention. That undertaking is spelled out in very simple language in article 1, which requires States to "respect and ensure respect" for the Convention. No State party can claim that its duty on this point is somehow unclear or that the passage of time has lessened these obligations.

This is relevant because a new Government is about to take power in Israel. This Government comes from the same party that sought and signed peace agreements with the Palestine Liberation Organization (PLO). However, what determines enforcement, as article 1 envisages, are violations. Such enforcement action would involve prohibiting any settlement activity, including by-pass roads. This activity breaches article 47 and possibly article 49, and other international law, including the Oslo and subsequent agreements between Israel and the PLO. This calls for perhaps a higher level of enforcement than many States would be interested in accepting. But this is the standard: the Fourth Geneva Convention views all Israeli settlements as illegal, therefore any construction is directed towards an illegal purpose. In addition, the Fourth Geneva Convention makes illegal killing, torture, unfair trials, collective punishment and a host of other measures that Israel pursues. These too would have to stop. Any standard less than this would be politicization of the Convention. Any attempt to barter the Convention, the rights therein and the article 1 duty involves a degree of pragmatism beyond the scope and in violation of the Convention.

In conclusion on this point, High Contracting Parties are obliged by article 1 to ensure Israel's respect of the Fourth Geneva Convention, even where there are ongoing attempts at a settlement, in particular if these allow or result in violations of the Fourth Geneva Convention.

Process

Turning to the question of enforcements. Thus far no State has invoked article 1 to justify actions it has taken to ensure a recalcitrant State's respect of the Convention.

The article 1 obligation to ensure respect clearly involve a number of measures. The most basic of these is the duty to monitor belligerent actions. The High Contacting Parties have conducted such monitoring, severally, jointly and collectively, and a common view has been reached on the results of such monitoring. As set out in the opening sentences, it has been widely confirmed that Israel is violating the Fourth Geneva Convention.

The results of this monitoring have frequently led to the second level of enforcement, demands that the occupying Power respect the Convention. The United Nations General Assembly emergency special session resolutions are but one category of many resolutions requiring Israel's respect. But Israel has continued to ignore international consensus and must be prepared for the next level of enforcement.

The third level would be to agree to actual measures whereby enforcement would arise. This is the situation facing the international community and if the conference is to be meaningful, this is where discussions will occur.

Obligations

Although there are no indications on measures in article 1, the Geneva Conventions are not devoid of enforcement measures. There is, for example, the article 147 duty to pursue, capture and try those suspected of article 146 grave breaches. This is clearly a measure of enforcement, but this is in addition and complementary to article 1. High Contracting Parties must fulfil both article 1 and article 147. At the conference, High Contracting Parties should read the Convention in its integrity when considering enforcement obligations.

Conditions

In the arena of measures, the international community can be pragmatic, principally because the Convention is almost silent on this. Enforcement akin to Chapter VII intervention is unlikely to occur nor are these necessarily permissible under the Charter of the United Nations. Despite the General Assembly's acknowledgement that Israel's violations, as specified in the resolution, are threats to peace and security, the High Contracting Parties are not authorized and cannot claim authority to act under Chapter VII or even under the "Uniting for peace" resolution. High Contracting Parties in other forums, most typically in the North Atlantic Treaty Organization (NATO), could argue intervention peace and security . However, States are not then acting as High Contracting Parties, but as States in a regional security framework.

Of course, any enforcement action, including Chapter VII-based action, needs to be time-limited. This means any enforcement measure cannot be enforced in perpetuity. There are few mechanisms that cannot be reversed. Therefore, this may only inform the High Contracting Party of the process of enforcement. For example, Israel should be notified of the State's desire to pursue a particular enforcement mechanism and there must be an opportunity for the High Contracting Party to review the mechanism.

Related to the first condition of time is the requirement that any enforcement mechanism must be directed to the purpose intended. Therefore, High Contracting Parties should not pursue objectives that completely fail to ensure enforcement or that have been tried and failed. For example, High Contracting Parties cannot go back to the monitoring aspect of enforcement and claim they have discharged their article 1 duty. As explained, this has been tried and has failed to bring about Israeli compliance. Similarly, High Contracting Parties cannot attend the enforcement conference and merely pass a resolution akin to that of the General Assembly emergency special sessions; this too has been tried and failed to bring about Israeli respect. In any case, if this were to occur, the General

Assembly emergency special sessions; would be entitled to reconvene and press for another conference or it could seize responsibility for enforcement under the "Uniting for peace" resolution.

This condition also benefits Israel in that some measures should not be taken where these have significantly damaging consequences and are completely disassociated from the Geneva Convention.

Related to both these factors is the fact that enforcement measures should end when Israel demonstrates respect of the Convention. The end of violations does not mean the end of merely one or other type of violation. High Contracting Parties would need to receive notice by Israel that it intends applying the whole Fourth Geneva Convention and High Contracting Parties would need to monitor that all violations have ended. If violations begin again, enforcement should be automatically invoked and Israel's compliance again sought. It is implicit, therefore, that the conference would merely be the first step in a process of enforcement. This process would remain in place until the end of occupation.

Strategy

The range of enforcement measures would be to examine relationships of economic cooperation, where, for example, Israel benefits from direct aid, from technical assistance, from preferential trade arrangements and from access to markets; and scientific cooperation, including exchanges of personnel, knowledge and technology. This includes educational and cultural cooperation and, crucially, the significant security and military cooperation between Israel and State Parties. All of these would be within the package of measures and meet the article 1 obligations.

A successful programme of enforcement would be initiated gradually, capitalizing on the threat of enforcement and the actual enforcement mechanism. Therefore a sliding scale of enforcement would perhaps be useful. This sliding scale would be determined by calculating impact with the loss to the High Contracting Party.

Measures

At the very bottom of the scale of activities are actions that contribute to violations of the Fourth Geneva Convention. A useful example of this is the United States commitment of $1.2 billion to Israel for bypass roads and other construction associated with Wye. This example is interesting because it confirms the overriding nature of the Fourth Geneva Convention. It also raises the issue of article 1 against other High Contracting Parties facilitating violation. This cross-enforcement mechanism is implicit in the article 1 obligation, as the obligation to ensure respect is not restricted to the occupying Power. This also suggests a common approach to enforcement, a point I shall discuss momentarily.

Although this is the first point on the sliding scale of enforcement (to refrain from facilitating violations, described as the doctrine of "clean hands"), it should more accurately be viewed as an obligation. Under article 1, High Contracting Parties are obliged to respect the Convention. States cannot be respecting the Convention, on the one hand, while facilitating violations on the other. Therefore, the undertaking to end support to violations is not really the first means of enforcement, but an obligation, to which States have agreed upon becoming a party to the Convention. States must now end any activity that leads to facilitating the violations of the Fourth Geneva Convention.

The United States' investment in settlement infrastructure is one example. Another would be economic cooperation where it contributes to the economic well-being of the settlements, or where contributions or assistance is not "ring-fenced" (i.e. isolated from other budgetary items). High Contracting Parties are obliged to use means available to ensure respect on the part of other High Contracting Parties, not limited only to the occupying Power. Ring-fencing allows High Contracting Parties to allocate funds only for a particular purpose for the High Contracting Party to require from Israel accounts that testify to the use of funds only for the purposes allocated. In this way, funds are not tainted by actual or potential purposes that are in contravention of the Convention.

There is legal basis to withdraw this cooperation. International law denies validity to treaties that breach basic premises of law. Thus, an agreement to kill, torture, maim or violate another's being would be unlawful. States could take this one step further by agreeing that any cooperation contributing to an unlawful act is available for incremental withdrawal or complete nullification. This would principally concern security and military cooperation.

Security assistance and cooperation is of particular importance. Any assistance where Israel or its agents could commit a violation should end. High Contracting Parties could require that no armament will be deployed or used in the Occupied Palestinian Territory or funds used for a similar purpose. Moreover, High Contracting Parties cooperate with Israeli forces on security matters. One can only guess at the form this cooperation takes, but it is known, for example, that the United Nations Special Commission (UNSCOM) received technical cooperation for its operations. Measures of enforcement can operate where the security cooperation involves or is associated with violations in the occupied territories, or where violations have occurred and these have allowed for Israel's cooperation.

One measure High Contracting Parties could undertake is to require Israel to confirm that the information or skills were not obtained from violations of the Fourth Geneva Convention. To increase effectiveness, High Contracting Parties could re-state their finding that Israeli interrogation practices amount to torture, Israeli military courts fall below fair trials standards and Israeli military forces are known regularly to violate basic rights under the Convention, and this could include grave breaches for which there is liability.

A second tier of enforcement is for High Contracting Parties to end the violations of third parties, usually legal persons residing in the territory of the High Contracting Parties. The exchange of information, capital, goods or persons could be controlled in the same fashion as enforcement mechanisms operate to stop the High Contracting Party and its agents from contributing to violations. A stumbling block may arise where a High Contracting Party requires implementing legislation to achieve this purpose.

Another tranche of enforcement measures could involve properly applying human rights conditionality clauses that rest explicitly or implicitly cooperation agreements. These measures would involve the withdrawal of the privileges of cooperation. This could operate in every sphere of cooperation.

Another type of linkage would be to ensure that those benefiting from the cooperation should also come with clean hands or that Israel has discharged its obligation of respect of the Convention in relation to the beneficiaries. Numerous agencies operate elsewhere and obtain charitable status and tax breaks, or undertake activities, such as fundraising, that then lead to violations. As noted by the treaty monitoring body on the Economic, Social and Cultural Covenant, world Zionist organizations or the Jewish National Fund are examples of this type of institution, operating extraterritorially both in the occupied territory and in the jurisdiction of the High Contracting Parties themselves.

Cooperation agreements may also have specific limitations, such as the geographical limits on preferential trade agreements; Israel cannot lawfully export goods that originate from settlements and benefit from the trade agreements. A similar geographical limit can extend to legal persons who benefit from other forms of cooperation. For example, individuals who have served in the occupied territories or who live there.

Other mechanisms of enforcement could involve using corollary contractual arrangements with the Palestinians. For instance, the Palestinian-European Union agreement operates in the same way as the Israel-EU agreement. Indeed, a collateral arrangement could be said to exist, which is confirmed by the existence of the Barcelona framework. EU States could tie in preferential benefits with the amount of goods that Israel allows to be transported into or out of the Palestinian territories under the collateral association agreement. One concern here is that it would need to be tied to the Fourth Geneva Convention if it operates as a measure of enforcement within the realm of article 1. However, obvious connections can be drawn with the use of closure and the resulting restrictions on the export of goods with article 33 prohibiting collective penalties. The consideration of measures requires a process before and during the conference, and a process of follow-up. This process could begin with High Contracting

Parties conducting an audit of cooperation. This audit would set out the types of relationships where enforcement could occur, such as those already mentioned, taking into account losses to the Israeli State and public and to the enforcing State, and perhaps the potential losses to the Palestinians. The audit should also include private donations and secondary assistance provided to private aid institutions through tax breaks or charitable status. Some of this work has already been done by civil society and others remain ready to facilitate this audit. The value of the audit would not only assist in determining the enforcement measures available but the exercise could be an extremely powerful indication to Israel regarding the potential losses it would incur.

From past conduct, Israel would threaten retaliation against enforcing States, so it would be important to prepare for this. One factor that may need to be considered is the impact on smaller or vulnerable States. These States may need compensation for losses, and States should be imaginative about making alternative agreements to retain the common approach.

Maintaining a common front, in the spirit of the Convention, is obviously crucial. This common front naturally arises from recognition of the article 1 obligation as unilateral one and not collective. States, recognising their unilateral obligations, should seek to ensure there is a common approach to enforcement and cooperation in ensuring enforcement. This would maximize impact and minimize loss in the exercise. Good faith is obviously important to achieving this between enforcing States, and those outside, including, if possible, with Israel.

It is clear that there is significant political caution in pursuing enforcement of the Convention, partly because of Israeli reaction. This caution is advisable to the extent that it ensures fulfilments of legal obligations. However, a point must come when States are obliged to act. By failing to act, States damage the integrity of the international system and, specifically, damage treaties that are intended to protect individuals against abuse. The conference and measures that will be agreed upon there are intended to check those abuses and in this regard should be welcomed and pursued. The High Contracting Parties must come forward to convene the conference and prepare to put the Israeli Government on notice that the recorded violations of the Fourth Geneva Convention will not be tolerated. The conference would strengthen the Fourth Geneva Convention and the hand of the many in Israel who are genuinely pursuing peace and wish to see an end to Israeli violations. By failing to convene the conference, a dangerous precedent would be set for this and other conflicts, where the Geneva Conventions are intended to provide protection.

If peace and stability are to prevail, violation must be prohibited. The Fourth Geneva Convention provides the needed framework to fulfil peace. This framework was intended to address the terrible lessons of history still bearing on the human condition even as we approach the end of the millennium.

Ms. Miranda Joubert
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South Africa welcomes the opportunity to participate in this United Nations International Meeting on the Convening of the Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem.

Over the past years the world has witnessed, what can be termed as systematic, if not institutionalized, violations of international humanitarian law, that is, of the Geneva Conventions of 1949, and in particular of the Fourth Geneva Convention. This state of affairs is cause for grave concern and as such needs to be addressed not only urgently, but also in an effective manner. However, the violations of the Fourth Geneva Convention do not appear to relate to the provisions of the Fourth Geneva Convention as such, or to flaws in its provisions, but rather to the interpretation and/or application of those provisions. The interpretation problems seem to originate from political and/or legal considerations. In particular, these problems can be ascribed to the following:

(a) Owing to political and/or legal considerations (e.g. a denial that an armed conflict exists or that the title to the territory in question does not constitute an occupied territory) the Fourth Convention is interpreted in such a manner as to deny the application thereof to certain situations of armed conflict. Alternatively, assurances of respect for international humanitarian law become subject to considerations of political expediency, as a result of which the Fourth Convention is applied selectively and subjectively, thus leading to a weakened international humanitarian law. The aforesaid violations of the Fourth Convention become particularly dangerous, often resulting in excesses, when supported by historical, ideological and/or religious arguments;

(b) The political will or good faith often lacks with regard to the application or implementation of international humanitarian law, or with regard to ensuring respect for international humanitarian law;

(c) The problem of proportionality often causes security considerations of a military nature to override the safety considerations for and protection of the civilian population caught up in an armed conflict;

(d) The dissemination of international humanitarian law amongst Governments, including the military, and the civilian population is often lacking or inadequate as a result of which a human rights and international humanitarian law culture fails to come into existence.

The aforesaid problems cannot serve as justification for non-compliance with the Fourth Geneva Convention or with international humanitarian law as a whole. The force of international humanitarian law lies in the simplicity of its essence, namely, human compassion and its universality. By virtue of this universality or *erga omnes* nature of international humanitarian law, all States, and not only the High Contracting Parties to the Fourth Geneva Convention, should have the responsibility of applying the Fourth Convention as well as of ensuring that it is applied. The words "ensure respect" are interpreted to mean that High Contracting Parties to the Fourth Convention cannot merely be content to apply the provisions themselves, but must also ensure that the provisions are applied universally. Consequently, if violations of the Fourth Convention occur, it is, in terms of article 1 of the Fourth Convention, the responsibility of the international community to stop such violations and to take steps that result in the punishment of the violators. In particular where a High Contracting Party fails to fulfil its obligations under any of the Geneva Conventions, the other High Contracting Parties must endeavour to ensure that such a Party once again respects and abide by the Conventions. In this regard it is important to note that the Geneva Conventions shall apply to all circumstances, namely, "(a)s soon as one of the conditions of application for which article 2 provides, is present, no Contracting Party can offer any valid pretext, legal or otherwise, for not respecting the Convention in its entirety. 'In all circumstances' also means that the application of the Convention does not depend on the character of the conflict." (see The Geneva Conventions of 12 August 1949, Commentary (published under the editorship of Jean Pictet of the International Committee of the Red Cross to the Geneva Convention relative to the protection of civilian persons in time of war, Geneva, 1958, Article 1, page 16).

The Geneva Conventions allow for several implementation mechanisms. The States themselves have the primary responsibility for the mechanisms, both High Contracting Parties directly involved in an armed conflict, as well as all States who are party to humanitarian instruments. The following measures and mechanisms are available to ensure the effective implementation of not only the Fourth Geneva Convention, but also international humanitarian law as a whole:

(a) Implementation measures at national level:

  (i) The establishment of a national committee by each High Contracting Party for the purpose of overseeing the implementation of international humanitarian law within its jurisdiction;

  (ii) The enactment of enabling legislation whereby international humanitarian law becomes domestically applicable;

(iii) The ratification of or accession to international humanitarian law instruments, such as the 1977 Protocols to the Geneva Conventions, the Statute of the International Criminal Court and the Convention on the Banning of Anti-Personnel Mines;

(iv) The establishment of national dissemination programmes in order to educate both Government, including the military, and the civilian populations, with particular emphasis on the youth, whereby a human rights and international humanitarian law culture is established;

(v) The criminal repression of violations of international humanitarian law, by incorporating sanctions in respect of such violations into domestic law. In accordance with article 146 of the Fourth Convention, High Contracting Parties have the obligation to search for and punish all persons who have committed grave breaches of the Fourth Geneva Convention, regardless of the nationality of such persons and the place where such breaches were committed; High Contracting Parties must either bring such persons before their own domestic courts or hand them over to a High Contracting Party for prosecution;

(vi) Government support for humanitarian organizations such as ICRC;

(b) Implementation measures at international level:

(i) Support for the International Criminal Court and participation in international cooperation between States in respect of enforcing international humanitarian law, imposing sanctions on violators of it and awarding just compensation to victims of such violations. This includes assistance to States in connection with proceedings being brought with regard to grave breaches or the Geneva Conventions, for example, extradition;

(ii) In cases of particular serious violations, to act in terms of common article 1 of the Geneva Conventions and article 89 of Protocol I individually and jointly in cooperation with the United Nations and in conformity with the Charter of the United Nations. Actions in this regard may include:

a. Statements or resolutions by the Security Council, General Assembly and/or Secretary-General drawing attention to the applicability of international humanitarian law and denouncing violations of international humanitarian law.

b. In cases where violations of international humanitarian law are deemed to constitute a threat to peace and security, to bring such matters before the Security Council, which in terms of article 41 of the Charter of the United Nations is empowered to impose economic sanctions in such instances. In extreme cases that constitute a threat to peace and security, the Security Council may consider armed intervention;

(iii) Participate in the exchange of views between States in respect of the dissemination, interpretation and application of international humanitarian law instruments such as the Geneva Conventions and the Additional Protocols;

(iv) Accept and make use of the International Fact Finding Commission, which was established in terms of article 90 of Protocol I as a standing body of inquiry, in particular in the event of a dispute of facts arising between the parties to a conflict;

(v) Participate in the establishment of a monitoring process in respect of specific violations of the Fourth Convention;

(vi) Follow the procedure provided for in article 149 of the Fourth Convention whereby interested High Contracting Parties may agree to open an inquiry regarding any alleged violation of the Fourth Convention;

(vii) In the event of being a party to an armed conflict, to designate a Protecting Power, whose function it is to safeguard the interest of the parties to the conflict, which includes amongst others, to act as mediator or facilitator (supported and assisted by the ICRC) should a dispute, for example, arise between parties engaged in the armed conflict, or to visit all places where protected persons are located and to attend to proceedings of any court trying a protected person;

(viii) In the event of being an occupying Power, to set up a national information bureau responsible for receiving and forwarding information about protected persons under the control of the occupying Power and in order to improve the protection of the civilian population, set up hospital and safety zones as well as neutralized zones in the occupied territory;

(ix) The application of diplomatic measures by individual States, such as exerting diplomatic pressure on States who are in breach of their international humanitarian law obligations, for example, protests or the denunciation of those States on account of their actions and/or diplomatic pressure through intermediaries in order to convince the State(s) violating the Fourth Geneva Convention, to abide by and respect the provisions of the Convention in an objective and impartial manner. Coercive measures taken by individual States such as the expulsion of diplomats of the State that is deemed to be in breach of its international humanitarian law obligations, severance of diplomatic relations, halting of negotiations, the imposition of trade restrictions, sanctions or bans, the freezing of capital and/or the suspension of air transport.

In conclusion, it is the view of South Africa that High Contracting Parties have the responsibility to respect and ensure respect for international humanitarian law, to enhance such respect, to ensure that it does not become eroded and that humanitarian principles and respect for human dignity are not diminished. With regard to the Fourth Geneva Convention, in particular, civilian persons must be able to live as normal a life as possible, in accordance with their laws, culture and traditions.

In order to achieve the aforesaid, politics should be kept out of international humanitarian law. Political actions should rather be humanized instead of politicizing international humanitarian law. At all times there must be a clear distinction between what is humanitarian and what is political. The application of international humanitarian law is a question of political will and good faith. If the political will and good faith do not exist, fundamental rules will have little, if any, meaning. The Fourth Geneva Convention must be applied in a consistent, objective and impartial manner, to all situations of armed conflict, irrespective of the title to occupied territories or the status of an armed conflict.

Mr. David Delparaz
Head of the ICRC delegation in Cairo

I thank you for giving me the floor in this second plenary session on enforcement of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem.

In my presentation, I will summarize certain relevant provisions of the Convention and look at Convention mechanisms for its implementation. It is in this sense of "implementation" that I will speak on "enforcement".

1. Origin and spirit of the 1949 Geneva Convention relative to the protection of civilian persons in time of war

Before the Second World War, the Geneva Conventions protected only wounded, sick, shipwrecked or captured combatants. But then civilians became the main victims of armed conflict, the target of all manner of excesses, such as mass extermination, indiscriminate attack, deportation, hostage-taking, pillage and internment.

Adopted in Geneva in 1949, the Fourth Convention represented an innovation in that it protects "persons taking no active part in the hostilities" and "who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or occupying Power of which they are not nationals" (art. 3 and 4).

The main purpose of the Fourth Convention is to protect civilians under the control of an enemy State against arbitrary action by that State.

Article 4 defines in detail the categories of persons protected by the Convention, starting out from the broad principle that all those are protected who find themselves in case of conflict or occupation in the hands of a belligerent or occupying Power of which they are not nationals. This definition covers persons without any nationality. Specifically mentioned are nationals of an enemy State who find themselves in the territory of a belligerent State and the inhabitants of occupied territory, including nationals of neutral countries, who do not benefit from normal diplomatic representation in the belligerent State.

The Convention is based on the universally accepted principle requiring the parties to a conflict to ensure that, despite occupation and war, the people living in an occupied territory or foreign nationals living in the territory of a party to the conflict can continue to live in as normal a manner as possible and in accordance with their laws, their culture and their traditions.

2. Field of application and applicability

The Fourth Convention "shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no formal resistance" (art. 2).

The States wished to give the Convention a broad field of application in order to ensure civilians as extensive a degree of protection as possible. The key requirement here is that people find themselves in the hands of a State of which they are not nationals "at a given moment and in any manner whatsoever" (art. 4) in the course of an armed conflict or the occupation of a territory, even if that occupation meets with no armed resistance.

"As soon as one of the conditions of application for which article 2 provides is present, no Contracting Party can offer any valid pretext, legal or otherwise, for not respecting the Convention in its entirety. ('In all circumstances') also means that the application of the Convention does not depend on the character of the conflict." (The Geneva Conventions of 12 August 1949, Commentary (published under the editorship of Jean S. Pictet of the ICRC) to the Geneva Convention relative to the protection of civilian persons in time of war, Geneva, 1958, Article 1, page 16.)

The specification that an armed conflict need not necessarily be preceded by a declaration of war was included to take account of new characteristics of conflict and in order to ensure that the States would not be able to avoid their humanitarian obligations. (The ICRC Commentary states that "any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of article 2, even if one of the Parties denies the existence of a state of war.")

The second paragraph of article 2 covers situations in which territory is occupied without a declaration of war and without hostilities, other circumstances of occupation having already been covered in the first paragraph. The Convention becomes applicable to protected persons as soon as they come under the control of the occupying force.

In its capacity as the custodian of international humanitarian law and in agreement with the international community, ICRC has always affirmed the applicability of the Fourth Convention to the territories occupied by Israel in 1967. Today, ICRC considers that Israel remains bound by its provisions until the conclusion of a full-fledged peace treaty, in particular as concerns the territorial and administrative powers it is actually exercising there.

3. Protecting the civilian population

The Fourth Convention does not confine itself to laying down rules governing the situation of persons who find themselves under the adversary's control. One of its purposes is also to provide a degree of protection to the entire population of the warring parties. Part II of the Convention sets out basic principles aimed at alleviating the suffering caused by war and at sheltering from the effects of the fighting those persons who, by definition, take no part in the hostilities.

4. Occupied territories

While occupation is a more or less long-term situation during which a territory and its population find themselves under the control of an occupying force, the underlying principle remains that occupation should represent a *temporary* situation, one that can terminate only with the territory being restored to the State that has sovereignty over it or, in exceptional cases, by other measures being taken that are in accordance with international law.

The occupying Power cannot change the status of the territory it occupies. Though it becomes the *de facto* administrator of that territory, the occupying Power must maintain and preserve the economic and social structures and respect the customs. It can amend the laws and regulations in force in the territory only to the extent needed to enable it to meet its obligations under the Fourth Convention, and to maintain orderly government and ensure its own security. The State whose territory is occupied retains its legislative, administrative and juridical functions, it being understood that the respective roles of the occupied State and the occupying Power may be dictated by the latter's security needs. Thus, the occupying Power is responsible for the protected population's welfare and has a duty to provide "good government" (Encyclopaedia of Public International Law, vol. III, p. 765).

It is obvious that long-term occupation has produced particular problems and the longer an occupation continues, the more difficult it is to ensure effective compliance with the Fourth Convention.

5a. Specific aspects of protection: The civilian population

Civilians, whether in occupied territory or not, are fundamentally entitled, in all circumstances, to respect for their persons, their honour, their family rights, religious convictions and practices and their manners and customs (art. 27). More specifically, physical and moral coercion are prohibited, as are corporal punishment and torture, collective punishment, pillage and reprisals and hostage-taking.

The inviolability of rights and benefits of the Convention has been especially underlined for persons in occupied territories; they shall not be deprived of their benefits by changes introduced to institutions or Governments due to the occupation, by agreements concluded between occupied and occupying Power or by annexation (art. 47).

Deportations, transfers and evacuations are authorized only if the safety of the population or imperative military considerations so require. They may take place only — in principle — within the occupied territories and for a limited period of time (art. 49, para. 2).

The transfer of nationals of the occupying Power into the occupied territory is prohibited (art. 49, para. 6).

5 b. Specific aspects of protection: civilian internees

The Fourth Convention allows the internment of protected persons under certain, well-defined conditions. Provision is made for interning both foreign nationals in the territory of a warring party and the inhabitants of an occupied territory.

The internment of protected persons in the territory of a warring party "may be ordered only if the security of the Detaining Power makes it absolutely necessary" (art. 42). Any person so interned is nevertheless entitled to have that measure reconsidered by an appropriate court or administrative board. If the internment is maintained, the court or board must periodically review the case.

6. Implementing international humanitarian law

Implementation means all measures that must be taken to ensure that the rules are fully complied with and legal obligations translated into action. If it is not actively implemented, international humanitarian law risks losing all credibility.

The Fourth Convention provides several mechanisms for implementation. The States themselves have primary responsibility for this, above all those directly involved in an armed conflict — in particular an occupation — and subsidiarily all States party to the humanitarian treaties.

Some measures must be taken already in peacetime, while others are to be taken once fighting has begun. Certain mechanisms involve action by third parties.

6a. Implementation measures at the national level

Though most provisions of international humanitarian law must be implemented whether or not national legislation has been adopted to this effect, others definitely require the adoption of legislation or internal regulations. It is of no importance whether a State has adopted a monist or dualist approach to the incorporation of international law into national law. Article 27 of the Vienna Convention (a provision reflecting customary law) points out that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

National legislation

One of the most important legislative measures that must be taken by States concerns the repression of war crimes (art.146). The States must ensure that their laws include criminal sanctions for serious violations of humanitarian law.

General obligation of repression of grave breaches

In accordance with the principle of universal jurisdiction, international humanitarian law demands that the States search for and punish all persons who have committed grave breaches of the law as listed in article 147, regardless of the place where the breach was committed. They must either bring those persons before their own courts or hand them over to a State party to the Convention for prosecution. The setting up of the ad hoc international tribunals has prompted certain States to begin cooperation in this area. The International Criminal Court, the Statute for which has been adopted, should serve to further strengthen the implementation of humanitarian law.

Dissemination

In peacetime as in wartime, the States Parties are obliged to make the provisions of the Fourth Convention known as widely as possible throughout the population and to incorporate those provisions in their military training programmes (art. 144).

6b. Other mechanisms

6b(i) The role of the Protecting Powers and ICRC

The Fourth Convention provides for scrutiny of its implementation by Protecting Powers whose duty it is to safeguard the interests in humanitarian terms of one of the parties to a conflict (art. 9).

The Protecting Powers can also lend their good offices in the event of a dispute between the warring parties over application or interpretation of the Convention's provisions (art. 12). In addition, their representatives are entitled to visit all places where protected persons are located (art. 143). They must be granted access to all places of internment or detention and be allowed to privately interview the protected persons held there. No limits may be set on the frequency or duration of these visits and to attend the proceedings of any court trying a protected person (article 74).

Where there is no agreement designating Protecting Powers, ICRC substitutes for them on the basis of article 11. It has turned out in practice that a large number of tasks assigned to the Protecting Powers have in fact been taken on by ICRC, which has been granted a *de jure* right of initiative enabling it to undertake activities on behalf of the civilian population (art. 10). The organization enjoys the same rights as the Protecting Powers regarding access to protected persons (art. 143, par. 5).

In many cases, the mandate of ICRC and its specific role have been recognised by the parties to the conflict.

Since 1967, ICRC has been permanently present in Israel in the occupied territories, visiting detainees, restoring and maintaining contact between family members separated by the events, providing assistance to medical facilities in need, making representations as a neutral and independent intermediary whenever necessary to help persons whose rights have been violated under humanitarian law.

6b(ii). Inquiries

Under Article 149 of the Fourth Convention, the interested parties may agree to open an inquiry regarding any alleged violation of the Convention. In practice, it has proved very difficult to reach agreement between warring States on such an inquiry.

At the diplomatic conference that led to the adoption of the Additional Protocols in 1977, the need was voiced to create a standing body of inquiry. As a result, both the principle and the tasks of the International Fact-Finding Commission were anchored in article 90 of Additional Protocol I. Though constituted in 1991, the Commission has never been called upon to conduct an inquiry.

6c. Article 1 common to the four Geneva Conventions

Article 1 common to all four Geneva Conventions stipulates that the "High Contracting Parties undertake to respect and ensure respect for the present Convention in all circumstances". By making this declaration, the States party to the Geneva Convention sought to underscore the particular nature of those treaties, which are not simple contracts based on the principle of reciprocity. The Conventions' universality — there are at present 188 High Contracting Parties — and the intrinsic value of the humanitarian principles they enshrine have given the obligation contained in their words "to respect and ensure respect" an *erga omnes* character.

Concluding remarks

Indeed, ICRC has always welcomed all individual and joint efforts by the States party to the Geneva Conventions aimed at discharging this obligation and enhancing respect for international humanitarian law. Of course, the means and methods deployed to fulfil these *legal and political responsibilities* are to be decided upon by the States. The measures taken on the basis of art. 1 must not be in contradiction with the Charter of the United Nations and international public law. Within this framework, the States should chose the most adequate measures.

For its part, ICRC would like to stress that it must continue to be in a position to act in a completely neutral and independent manner and free of any politically motivated constraints in order to carry out its humanitarian mandate in accordance with its principles.

In conclusion, ICRC wishes to emphasize that international responses to recurrent humanitarian problems, such as the ones encountered in the Occupied Palestinian Territory, including Jerusalem, should aim at achieving respect for international humanitarian law and, thus, at bringing positive and practical results for the benefit of the protected population.

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Application of the Fourth Geneva Convention to the Occupied Palestinian Territory since 1967, and Israeli violations of its provisions

Conclusion of the study

The international responsibility of Israel by reason of its crimes in the Occupied Palestinian Territory

The presentation based on the provisions of the Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War established that Israel has committed all kinds of crimes against the Arab population in the occupied territory and that it has infringed not only the provisions of the Fourth Convention but all the rules of international law concerning human rights at the present time, including assassination, expulsion, the displacement of persons and torture. The so-called "Supreme Court" of Israel has sanctioned torture against Palestinian prisoners and detainees. It is unprecedented in modern history for a court to rule in favour of torture. This was something previously unheard of, either in the time of fascism and nazism or in the present age of zionism.

The zionist movement, of which Israel is a consequence, is one of the three odious movements that have stained the twentieth century with bloodthirsty ideas that have resulted in the slaughter of millions of people. The three movements are fascism, nazism and zionism.

The first two movements have fallen into oblivion while the terrorist zionist movement has remained and stains the Arab east with blood on a daily basis in the Arab territories in Palestine and in south Lebanon. It will be for the planned Conference of States Parties to find a solution that will turn the page of this third racist movement in the same way as the page of fascism and nazism was turned earlier.

That will be a simple, straightforward and feasible matter if the zionist Government repudiates its arrogance, complies with its international obligations and is willing to live in peace with its neighbours, and if it assumes the international responsibility for its crimes and errors with respect to the Palestinian people and to the other peoples of the region who have suffered from its excesses and its continual aggression from 1956 up to the present day.

International responsibility is the penalty that follows a violation by a subject of international law of its obligations arising from an international legal norm.

Israel has violated all the rules of law relating to military occupation and the protection of civilians, has perpetrated unprecedented atrocities and crimes, and has killed tens of thousands of innocent people ever since the region first suffered from the plague of aggressive and expansionist zionist racism.

The Palestinian people has sustained grievous damage in terms of human life, property and natural resources, which have been exploited by Israel in the decades since 1967.

It must now bear responsibility for all the consequences and, first of all, must put an end to its criminal actions against the Arab civilian population in the occupied territory.

The first way of setting right the damage to international life is to put an end to illegal international actions, which are still continuing. This is only the first step towards repairing the damage, because it may not be enough to eliminate all the harm arising from such actions which have inflicted substantial damage on others.

The occupation is continuing. It is a constant aggression because it can be sustained and ensured only by military force. There must therefore be an end to this occupation and a withdrawal from the occupied territory, which must be left in the hands of its rightful owners.

In order for such a withdrawal to take place, Israel must cease all illegal acts such as the destruction of homes and the seizure of public and private property, and it must stop all construction works in the occupied territory and dismantle and remove existing settlements because they were built on other people's property and therefore have no legitimacy.

The cessation of illegal international actions is an aspect of international jurisprudence in many judgements, in particular where the actions are still continuing.

The International Court of Arbitration, in the case of the Rainbow Warrior between France and New Zealand, said that a breach of international obligations could be stopped only if the prejudicial action was actual and continuing. If that was not the case, the only means of repairing the damage in the true sense was compensation or apology.

In the case of the United States citizens in Tehran in 1980, the International Court of Justice drew a parallel between the need to put an end to the illegal actions and the need to pay compensation when it stated that the Islamic Republic of Iran must immediately put an end to the illegal detention of the members of the United States diplomatic mission and ensure the process of their immediate, unrestricted and unconditional release. Subsequently, Iran must pay appropriate compensation in order to repair the damage suffered by the United States of America and its citizens.

In the case concerning military and paramilitary activities in and against Nicaragua, 1984-1986, the International Court of Justice declared:

> "... that the United States of America is under a duty immediately to cease and refrain from all such acts as may constitute breaches of [its] ... legal obligations [and] is under an obligation to make reparation to the Republic of Nicaragua for injury caused to Nicaragua [by its actions]."

In its resolution 678 (1990), the Security Council warned Iraq to desist from its illegal international actions and to withdraw from Kuwait, otherwise it would face military action. That was in fact what happened in 1991.

In compliance with these legal principles concerning the theory of state responsibility, Israel must cease all its illegal actions and compensate the Palestinian people for all the damage inflicted on it as a result of the illegal occupation.

The third consequence of State responsibility is material restitution or the restoration of the *status quo ante*.

This implies that Israel must return to the Palestinians all the public and private property it has seized in the form of houses, territories, documents or antiquities. We are aware that, during its attack on Lebanon, Israel even robbed, looted and plundered the Centre for Palestinian Studies in Beirut, which contained all the documents relating to the Palestinian cause that were not plundered during its ocupation of the West Bank and Gaza in 1982. Only part of these documents have been returned, the remainder having been kept by Israel. It must also release all the prisoners and restore the institutions it has destroyed and the farms and fields it has devastated.

Material restitution is a principle that has been applied by the International Court of Justice in its judgments. In the case concerning the Temple of Preah Vihear between Cambodia and Thailand of 1962, Thailand was ordered to cease its illegal international action, namely the occupation of the temple, and to withdraw its military forces from the vicinity of the temple. Thailand was also ordered to return all the objects, artifacts and historical and artistic antiquities that it had removed and stolen from the temple during the illegal occupation of the temple by the Thai forces since 1954.

The great French arbitrator, René Jean Debois, in the Texaco case of 1977, stated that: "The material restitution of things and the restoration of the *status quo ante* are the appropriate and just reparation for the infringement of international obligations. Recourse can be had to an alternative solution in the form of pecuniary compensation only where it is absolutely impossible to restore the *status quo ante*."

The Permanent Court of International Justice in the case of the free areas between France and Switzerland of 1933 declared the law passed by the French National Assembly in 1923 to be null and void. It was incumbent on France to restore the situation in the free areas to what it had been prior to the adoption of that law.

Accordingly, it is incumbent on Israel to return all the territories, and the public and private property, and everything that it has stolen and plundered, to the Palestinian people. We challenge this racist State, if these words and the rule of law are not to its liking, to take into account the competence of the International Court of Justice on all aspects of the Palestinian cause and we shall find out what the results will be.

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The interesting statements which we heard in the panel of experts held yesterday clearly demonstrate what reality has confirmed on many occasions; one example is the case of the Israeli policies and practices in the Occupied Palestinian Territory.

I refer to the extreme organic and functional weakness of the 1949 Geneva Conventions, which allows their provisions to be contravened and infringed upon openly with almost total impunity.

To some extent, however, this weakness derives from the failings of public international law, the legal order encompassing international humanitarian law, when powerful political interests influence its implementation. It is not what "should be" but reality which we are compelled to recognize because that is what surrounds us. I would stress that this does not mean disregarding the immense value of the Geneva Conventions, from both the legal and the human points of view, and also from various other perspectives, despite the limitations which impinge on their effectiveness.

We have absolutely no doubt that the fundamental norms of the Conventions have universal legal value, whether in terms of treaty law, customary law, or as general principles of law, and that, in addition, they are strongly rooted in conscience and morality, which are also universal. Moreover, we believe that many of the provisions of the Conventions have acquired the hierarchical rank of norms of *jus cogens*, and, if this view is shared, there is an obligation to implement them. This is not the time or the place to explain the grounds for this position.

Referring once again to the reality we mentioned before, however, we note that there are many difficulties which obstruct or impede the full implementation of the Conventions, including, of course, the Fourth Convention.

The first difficulty we observe is that, notwithstanding the objectives which were fixed when the Conventions were drawn up, these instruments are part of the historical reality of exactly 50 years ago; at that time the principle of absolute sovereignty, which is so alien to and distant from the globalization now taking place in the legal sphere, was an almost unlimited right of States, and States, along with international organizations, were the only subjects of international law, the individual being relegated to playing the role of mere object of that legal order.

Until 1949, it was difficult for States to renounce part of their sovereignty for the sake of the common good of international society or in relation to the topic we are considering, namely, human rights and the rights of peoples. We may recall, in this respect, that the Universal Declaration of Human Rights was adopted by means of a resolution of the United Nations General Assembly and for that reason did not have the status of a treaty which would create legal obligations but that of a recommendation which could be regarded as the expression of an ideal, a programme, a guide or a source of inspiration. Later, this interpretation was substantially changed over the course of the years and with the emergence and development of the process of the humanization of international law. We make this reference because of the need to correlate the date on which the Universal Declaration was approved with the date on which the Conventions were adopted so that we may draw the appropriate conclusions. All these instruments are a product of that era and reflect its reality, not that of the current, so extraordinarily different, era. There is an important historical cause here which explains the shortcomings and difficulties which impede the full effectiveness of the Geneva Conventions.

Among them we may note the absence of adequate bodies with decision-making power and with the capacity to exert authority and make rulings. We observe an extreme weakness in the mechanisms for monitoring and safeguards, which makes the success or failure of the implementation of the Conventions dependent on the will of States.

Furthermore, since international humanitarian law is directed towards States, although its direct beneficiaries are individuals, not all Governments have incorporated the Geneva Conventions into their domestic law or adopted legislation to allow their effective implementation in the national sphere, although there are norms which are automatically enforceable. This unfortunate situation, which violates the principles of good faith in the fulfilment of international commitments and *pacta sunt servanda*, has prevented the domestic courts in many States from adequately punishing offenders, thereby protecting their impunity.

In relation to this assessment, which might appear to many to be rash or pessimistic, the last point we need to make is that States have not demonstrated sufficient political will to apply the Geneva Conventions, effectively and without exceptions. The *dura lex* principle is thus widely subordinated to the requirements and conditions of the national interest, especially for the great Powers.

In the case of the Occupied Palestinian Territory, including Jerusalem, not only the Fourth Geneva Convention of 1949, but also numerous other treaties and basic legal principles of today's international community have remained unimplemented. I would venture to say that over the past half century no State has so flagrantly violated international law in the manner and to the extent that Israel has done vis-à-vis the Palestinian people and the Arab people in general. And it has acted with absolute impunity. This is oppressive for those directly affected but also entails serious dangers and risks for the international community as a whole. We may recall that the last country to act in this way was Hitler's Germany and we already know the consequences for mankind of its disregard for legal norms and international agreements.

I do not propose to analyse the Israeli challenge to the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory. I believe that this issue was already the subject of outstanding statements made yesterday afternoon by various experts, who demolished Israel's untenable position with powerful and convincing legal arguments.

I will simply state that the two most important United Nations organs, the General Assembly and the Security Council, have noted and reaffirmed on numerous occasions, "that the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 is applicable to the Occupied Palestinian Territory, including

Jerusalem, and to the other Arab territories occupied by Israel since 1967", requiring its *de jure* application and the scrupulous observance of its provisions.

However, Israeli policies and practices have not undergone any major changes in their substance as a result, and except for some cosmetic touch-ups, remain immutable.

Therefore, the United Nations General Assembly has recommended that the High Contracting Parties to the Fourth Geneva Convention of 1949 should hold a conference to discuss measures that should be adopted to ensure its application in the Occupied Palestinian Territory, including Jerusalem.

Concerning this initiative, I believe that it will take hard work to obtain the desired results and that States, naturally including the Arab States, have the major responsibility for this task.

However, we should not be overly optimistic in believing that a diplomatic conference will achieve the objective of the immediate application of the Fourth Geneva Convention to the Occupied Palestinian Territory, including Jerusalem. It would be more realistic for us to expect to achieve more limited targets that will allow future progress in the right direction, since, at the current stage of development of international law, the use of coercive measures still depends on the will of States, especially the great Powers which are members of the United Nations Security Council. In other words, faced with Israel's resistance to respecting the Convention, understandably, the possibility of imposing sanctions or taking coercive measures without the agreement of the countries which have veto power is remote.

Along those lines, and without prejudice to any other ideas, it seems to me that the following initiatives could be submitted to the conference for consideration:

1. A special autonomous and permanent commission on the application of the Fourth Geneva Convention, with investigative and mediation functions, should be established, with the ability to propose specific measures to ensure its application in a particular territory in situations of war or armed conflict not of an international character, as the representative of the High Contracting Parties, to the General Assembly and Security Council.

2. Specifically in respect to the Occupied Palestinian Territory, including Jerusalem, in order to put pressure on Israel, the High Contracting Parties could take steps to approve various types of measures to obtain the application of the Fourth Convention, especially as contained in Article 41 of the Charter of the United Nations, without prejudice to any others therein or which the Security Council or General Assembly might take in exceptional circumstances.

3. By initiating the appropriate legal procedures, the case of the Occupied Palestinian Territory and the grave breaches of the Fourth Geneva Convention of 1949 should be brought before the International Criminal Court, once it begins operations. We should recall that, in accordance with the adopted draft, the Court's jurisdiction extends to war crimes, which have been defined as grave violations of the Geneva Conventions of 12 August 1949 against protected persons and property.

4. The High Contracting Parties should be required to adopt supplementary national legislation enabling the application of the non-self-executing provisions of the Fourth Convention, as it prescribes.

5. A specialized conference should be called for the purpose of refining and even combining into a single text the Geneva Conventions of 1949, taking into account the new international situation. There are important precedents in other areas of public international law, for example, the United Nations Convention on the Law of the Sea, adopted in Jamaica in 1982, which made the Geneva Conventions of 1958 on the subject virtually obsolete. Such a text would combine the main provisions of the Conventions and adapt them through the progressive development of international law to the needs and demands of our times. Moreover, the technique for redrafting, systemizing, codifying and progressively developing a particular legal system already exists and has been used, and thus could easily be applied

to the Conventions and their Additional Protocols, dating from 1949 and 1977, respectively, which constitute international humanitarian law.

6. It should be recommended to the High Contracting Parties that, in fulfilment of the obligations assumed in the joint article 1 of the Geneva Conventions of 1949, to "respect and to ensure respect for" their provisions (the implications of this phrase are of crucial importance), they should introduce amendments to their national procedural legislation, as necessary, so that their courts can exercise jurisdiction in cases of violations of protected human rights when international crimes are not tried and punished by the State in whose territory they were committed, provided that such crimes are not submitted to an international jurisdiction.

This type of measure would also open up the possibility of extradition for those directly responsible for committing crimes against humanity, war crimes and breaches of the peace.

And finally,

7. It should be declared that no grave breaches of the Conventions of 1949 can be considered an act of State for purposes of avoiding individual criminal responsibility by claiming immunity from jurisdiction.

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Let me first express my gratitude and appreciation to the Committee on the Exercise of the Inalienable Rights of the Palestinian People for organizing this international meeting, which brings together legal experts from a variety of countries, and offers them the opportunity to speak in their personal capacity on the question of enforcement of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem, the central issue to be discussed at the forthcoming Geneva Conference on 15 July 1999.

Our meeting convenes today on a timely and most important subject. It concerns the implementation of international humanitarian law, that branch of law that has recently assumed an ever growing prominence, as an expression of our generation's ideal of the rule of law in international relations.

The meeting takes place in a year of historic celebrations. Let us remember that 1999 marks the centenary of the first Hague Peace Conference, which began a long ongoing process of outlawing destructive deadly weapons while setting up the first institution for peaceful settlement of disputes. It is also the fiftieth anniversary of the signing of the four Geneva Conventions, which laid down a set of universal rules for humane conduct in armed conflict. And lastly, this year marks the anniversary of the Convention on the Rights of the Child, that combines articles of human rights with provisions of international humanitarian law.

As this century draws to a close, we may also add to that series last year's celebration of the fiftieth anniversary of the Universal Declaration of Human Rights, whose principles have been enshrined over the years in a number of international conventions forming the core of a growing body of international human rights law. Also last year, the adoption in Rome of the Statute of the International Criminal Court, which has since been signed by 82 States, marked an important step in institutionalizing the enforcement of international humanitarian law in terms of individual criminal responsibility.

These recent developments in the field of international humanitarian law, have found their inspirational source in the Charter of the United Nations, which declares the solving of international problems of a humanitarian character to be one of the main purposes of the United Nations. And they should be seen as part of the long-term efforts and overall contribution to the codification and implementation of international humanitarian law of the United Nations and other humanitarian organizations, notably the International Committee of the Red Cross.

But while we may rejoice at the richness of this legal creativity and the proliferation of instruments of international humanitarian law, we cannot but notice with concern the widening gap between the rules of international humanitarian law and their actual application. The case of the Fourth Geneva Convention provides a good illustration of that regrettable situation.

The issue is therefore not to develop new rules, since current humanitarian law already comprises all the basic rules and principles. Rather it is the necessity to ensure the compliance of all parties with the relevant established rules of international humanitarian law, and to devise effective mechanism for their implementation.

This is not an easy task for the United Nations, which is often confronted in its dealing with humanitarian issues with some difficult challenges: how to refrain from attempting to politicize humanitarian issues; how to avoid selectivity and double standards; how to avoid using humanitarian action as a substitute for the necessary political action; and how to reconcile preservation of the sovereignty of States and their domestic jurisdiction with the ever growing drive to protect human rights worldwide.

But there is perhaps no greater need in our turbulent world of today than to raise to the challenge of confronting the growing civilian toll of armed conflict and protecting the millions of innocent civilians who now account for the vast majority of casualties in armed conflict. Civilians have increasingly become primary targets in many armed conflicts in which the basic rules of humanitarian law have been deliberately violated. Such a trend has been observed in the Balkans, in the Great Lakes region, in West Africa, in the Caucasus and in the Middle East.

This explains why the International Court of Justice in its most recent cases involving Yugoslavia and a number of NATO countries, expressed on 2 June 1999 its deep concern with the human tragedy, the loss of life and the human suffering in Kosovo and other parts of Yugoslavia, and called upon all parties to act in conformity with their obligations under the Charter of the United Nations and other rules of international law, including humanitarian law.

It also explains why the Security Council recently devoted a number of official meetings in February 1999 to a comprehensive discussion of the issue of "Protection of civilians in armed conflict". And it finally explains why the Fourth Geneva Convention of 1949 has become the core of many Security Council and General Assembly resolutions, calling for its strict observance and the full respect for the rules of international humanitarian law. In short, it explains the rationale behind the international community's current sustained efforts to improve the physical and legal protection of civilians in situations of armed conflict.

The signing of the Fourth Geneva Convention in 1949 was a major breakthrough, which culminated long efforts over the years to ensure better protection for civilians in times of war. And while the Convention, which has now been ratified by 188 States, has received universal recognition, its observance and implementation is still lacking, since serious violations of its provisions have become common practice in many conflicts.

Thus, a major problem facing implementation stems from the frequent refusal of the occupying Power to acknowledge that definition, thereby contesting its obligation to apply the Convention. Since the main aim of the Convention resides in alleviating human suffering caused by a conflict, lengthy legal debate over the applicability of the Convention, although politically important, should therefore be minimized, so as to close the door to any pretext by the occupying Power for derogations from the basic rules. Instead, efforts should be centred on the practical problems arising from occupation with a view to adopt practical steps for their early solution. And for this to take place, bearing in mind that occupation is a temporary situation that allows no change under the Convention in the legal status of the territory or the continued normal life of its inhabitants in accordance with their laws, culture and traditions.

However, the most effective way to bring about an end to any violations of the applicable rules of international humanitarian law is to deal with the underlying issues of the conflict, thus bringing about an end to that occupation. But let us add, in all candour, that any success in settling those issues, that is, applicability of the Convention, practical problems of the occupation and the underlying conflict, depends to a large extent firstly on the cooperation of the parties concerned and their good faith, and secondly on the international community's readiness to adopt a clear and firm position vis-à-vis the recalcitrant party.

In assessing now the effectiveness of the mechanisms provided under the Fourth Convention for implementation of its provisions, we cannot but express consternation over the fact that the role contemplated for the Protecting Powers and the International Fact-finding Commission has virtually remained dead letter. Will the newly created International Criminal Court witness a similar fate? As a general rule, much depends in the activation of these bodies on the political and practical support they receive from the international community to accomplish their task.

The difficulty in implementing the Protecting Power mechanism owing to the lack of consent of a party to the conflict, could be overcome by granting ICRC, well known for its neutrality and impartiality, the necessary mandate to play the role of substitute, either formally as provided in the Convention or informally, if formal acceptance is difficult to achieve. Likewise, the International Fact-finding Commission's role could be revived by inducing more States to formally recognize its competence, or alternatively to grant their consent for its role in any given situation. And this task of fact-finding can be supplemented by humanitarian missions undertaken by United Nations ad hoc bodies.

A unique feature of the four Geneva Conventions and their Additional Protocols lies in the collective responsibility of the Parties for their implementation, since they undertook in common article I "to respect and to ensure respect for the Conventions in all circumstances". It underscores the particular legal nature of the Conventions, their universality and the essential value of the body of humanitarian law they incorporate. The carrying out of this solemn obligation entails, in our opinion, concrete action on the part of the Parties to ensure respect for the Convention and not merely rebuke or condemnation of the violating State.

However, the permissible limits of such action should always be consistent with the provisions of the Charter of the United Nations. In cases of serious violations, like those perpetrated in a systematic manner as deliberate policies of a State, such action could be taken in cooperation with the United Nations, which under its Charter can adopt a variety of measures, including coercive ones. And as a true reaffirmation of their collective responsibility, the High Contracting Parties of the Conventions should seek to hold periodic meetings among themselves, so as to create an institutionalized forum for undertaking effective collective action.

The measures just suggested for enhancing the implementation of the Fourth Geneva Convention would apply to any occupied territory, including Occupied Palestinian Territory, of which Jerusalem is an integral part — one crucial question raised in this regard is the issue of the applicability of the Fourth Convention in Occupied Palestinian Territory in the light of Israel's refusal to accept its *de jure* applicability while agreeing only to its *de facto* application.

International legal opinion, the positions adopted by the United Nations Security Council — in 24 resolutions — and the General Assembly in ordinary and emergency special sessions — five resolutions in the last one — as well as the International Committee of the Red Cross, all clearly confirm the applicability of the Fourth Geneva Convention to the territories occupied by Israel since 1967, including Jerusalem, and call upon Israel, as party to the Convention since January 1952, to comply with its provisions and accept its *de jure* applicability. Israel's contention on this issue must therefore be categorically rejected on solid legal grounds, including the inadmissibility that a duly ratified international treaty may be suspended at the wish of one of the parties, who by refusing to apply its provisions *in toto* seeks to establish a new category of legal rules which it might apply according to its own free discretion. Furthermore, there is ample evidence produced by several impartial bodies, governmental or non-governmental, international or even Israeli, refuting Israel's contention that although the Convention is not legally applicable, nonetheless it implements its provisions in practice. And in the final analysis, all violations of the Fourth Geneva Convention are the outcome of the very fact of Israel's illegal occupation of the concerned Palestinian and other Arab territories.

These are some of the main issues that serve as background to the forthcoming Geneva Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem. The convening of that Conference by Switzerland, as depositary of the Geneva Conventions, assumes a historic importance, since it is the first such meeting of the Contracting Parties to the Convention at that level. The Conference could open the door for future similar meetings, held on a regular basis, to monitor implementation of the Convention in Palestinian territory or any other occupied territory where the provisions of the Convention are not applied and fully respected. And in a more general context, the convening of the Conference can be considered an expression of the international community's renewed determination to ensure application of the instruments of international humanitarian law and their enforcement, an important step to reinforcing the rule of law in armed conflict.

In more specific terms, we can expect from the Conference to attempt reaching consensus upon a number of basic principles, while devising practical measures for enhancing implementation of the Convention. This in turn should take place within a constructive dialogue between the parties, a dialogue that would include all parties to the Convention. It is therefore regrettable that some major parties concerned have opted to boycott the Conference. They should rather take part in it and contribute to its outcome.

In our view, the Conference ought specifically to reaffirm its attachment to the basic principles of international humanitarian law applicable in armed conflicts and to their universal binding nature; its confirmation of the *de jure* applicability of the Fourth Geneva Convention in Occupied Palestinian Territory, including Jerusalem; its acknowledgment that the main principles enshrined in the Convention are consistent with the principles of the Charter of the United Nations, the Declaration of Human Rights, the Statute of the International Criminal Court, as well as the principles of customary international law; its support for the reactivation of the International Fact-finding Commission as an effective monitoring and verification system; its support for enhancing the valuable role of the International Committee of the Red Cross in ensuring application of the Convention; its support for the positive supportive role which other humanitarian, governmental and non-governmental organizations and civil society can play in that field; its stressing of the constructive role the judiciary might play in its pronouncement on humanitarian law issues with integrity and objectivity; its underlying the collective responsibility of the High Contracting parties to ensure implementation of the Convention, in particular those with special or close relations to the occupying Power; its confirmation of the individual criminal responsibility for serious violations under the Convention amounting to war crimes and crimes against humanity under the Statute of the International Criminal Court; its reaffirmation that all violations of the Fourth Geneva Convention in Palestinian territory are the outcome of Israel's illegal occupation; and finally, its determination to follow up the subject matter of the Conference at future periodic meetings, at an appropriate level.

In conclusion, it is our sincere hope that the Geneva Conference will represent a unique opportunity to increase worldwide awareness of the solemn obligation of States to respect the norms of international humanitarian law in armed conflict, and take collective measures to ensure their implementation in all circumstances by all States without exception. If the Conference succeeds in that objective, it would have significantly contributed to creating a better world, a world based on the rule of law and respect for the principles of humanity and justice.

V. PLENARY III

The upcoming Conference of High Contracting Parties to the Fourth Geneva Convention on Measures to Enforce the Convention, Geneva, 15 July 1999: possible outcomes

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In 1988, I was invited by the International Committee of the Red Cross (ICRC) to teach a summer course in Belgium for French-speaking students on the Fourth Geneva Convention, and back then I proposed that they should consider, as a practical exercise, the application of that Convention in the occupied Arab territories. Unfortunately, our discussions so far have left me feeling bitter because it is my impression, even though I am something of an optimist by nature, that the situation has changed little in the last 10 or so years. I am rather disappointed that things are not advancing as quickly as we would wish, but there are surely many reasons and factors to account for this. Having said this, our discussions over the last two days have yielded many elements with respect to the implementation of the Fourth Convention in the Occupied Palestinian Territory. So I will confine myself to the topic assigned to me, the implementation of the Fourth Geneva Convention in occupied Palestine.

Several sets of rules, which are complementary, though not identical, come to mind in this connection. The implementation of the relevant provisions of the Fourth Convention is governed in the first place by the law of Geneva. These provisions, which have already been cited, are article 1 and, in particular, chapter IV (article 142 onwards). Unfortunately, because of the attitude of Israel, little has been achieved so far precisely in terms of the application of this Convention.

The second group of rules that could be used are the rules of general international law, since its procedures, in terms of implementation, clearly also apply to the Fourth Convention. If a State violates the rules of international law and the rules contained in the Fourth Convention, it incurs international responsibility, but everyone knows that general international law is relatively weak when it comes to the implementation of its rules and norms and that there is no enforcement mechanism, even though there has recently been substantial progress in a certain number of cases, notably in the field of humanitarian law, with the establishment of the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda and, in particular, the adoption of the Rome Statute instituting the International Criminal Court. I believe there have been proposals that this Statute might perhaps be applied to the case that we are now discussing.

The third group of rules that could be invoked with a view to implementing the Fourth Geneva Convention are the rules relating to the Charter of the United Nations and the United Nations system. It has been noted that the United Nations is intervening with increasing frequency in the field of international humanitarian law, and it can even be stated that a certain complementarity has developed between the actions of ICRC and those of the United Nations. This complementarity seems entirely justified to me, even though it may disappoint some people or pose some problems in certain cases. But we have seen the United Nations intervening as far back as the Iran-Iraq war, on such issues as prisoners or chemical weapons, and creating procedures of considerable importance. The two main bodies concerned within the United Nations are the General Assembly and the Security Council, but, with the Security Council deadlocked on the question of Jerusalem, and despite the convening of an emergency special session of the General Assembly, the process has not yielded very tangible results as yet. However, this does not in my opinion exclude certain possible courses of action to secure the implementation of the Fourth Convention, measures to which the Conference that, I hope, will take place in July could give its support.

What measures can be proposed? The measures I have in mind may be entirely unworkable in the context of diplomacy. I therefore offer them for debate, and obviously it will be for the States to decide. First, could we not envisage requesting the International Court of Justice to give an advisory opinion? This is a procedure which is open to the General Assembly and the Security Council on the basis of Article 96, paragraph 1, of the Charter. These provisions state that the two principal organs of the United Nations may pose legal questions. This option is set out in very broad terms, much broader than in the case of paragraph 2, which deals with the other United Nations organs and the specialized agencies. They must have the authorization of the General Assembly and may refer to the Court at The Hague only questions that arise within the scope of their activities. There would be no such restriction on the General Assembly or the Security Council. This option would need to be studied carefully, especially the precise formulation of the question to be posed. Of course, the most obvious question at first glance would seem to be the issue of *de jure* or *de facto* applicability, which we were discussing earlier in private with a diplomat. He told me that for laymen this is less important than it is for lawyers. Above all, the risk of posing such a question to the International Court of Justice is in my opinion that, if the question is too general, the Court may take its time, as we saw with the nuclear issue. By contrast, the Court may respond quite quickly to a request for an opinion if in its view the matter is an urgent one. Thus, the choice of the question seems very important to me. It might be possible to find a very urgent case and pose a legal question, and request an opinion from the Court on the matter, and the Court might respond rapidly. We saw an example of this recently with the problem of immunity involving a rapporteur of the Commission on Human Rights. This is my first idea.

A second possibility, perhaps no more realistic than the first one, although it has already been mentioned, would be the setting-up by the General Assembly or the Security Council of a commission of inquiry modelled, albeit not directly, on the International Fact-finding Mission provided for in article 90 of Protocol 1, which, while it does not apply here, might nevertheless serve as a source of inspiration. Other precedents can also be cited: Rwanda, Yugoslavia or the less fortunate precedent of the Congo (formerly Zaire). Thus, there is no shortage of precedents, and the establishment of a such commission of inquiry might perhaps be proposed. Indeed, this idea is similar, at least to some degree, to the proposal made yesterday by Professor Jordan Paust who suggested a kind of body that would work alongside the Human Rights Committee within the framework of the International Covenant on Civil and Political Rights.

A third idea that I could put forward would be to entrust to the Committee on the Exercise of the Inalienable Rights of the Palestinian People a task that, although of a rather bureaucratic nature, would in my opinion be of some value, that is the drawing-up of a list of specific violations of the Fourth Convention. This idea came to me because, on reading the Committee's various reports, I noticed that the reports often stated in general terms that a violation of the Fourth Convention had taken place, without referring to any specific provision. So I think that it would be interesting to compile a list and perhaps to use the Internet to raise awareness of the exact nature of all the violations of the Fourth Convention that have already been noted by the various United Nations bodies.

Obviously, these proposals would need to be refined and fleshed out, but I shall mention one more, which occurred to me recently. It does not directly concern the United Nations, but it could nevertheless be presented to the Conference. This proposal relates to the area of economic pressure. We have seen that it is difficult to envisage the Security Council approving sanctions against Israel, given the current political situation. On the other hand, while it seems that the use of Chapter VII of the Charter is difficult to accept for some, we might look instead to the European Union. It has already used such economic pressure for political ends on several occasions. In fact, there are agreements governing economic relations between the European Union and Israel. Sanctions could be adopted within this framework.

These are the proposals, perhaps entirely unrealistic ones, that a professor of law who has long been interested in international law, human rights and humanitarian law ventures to suggest.

Dr. Ahmed Hassan Al-Rashedi
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First of all, I believe that what is more important than talking about enforcing the provisions of the Fourth Geneva Convention of 1949 relating to the protection of civilian persons under occupation is to seek urgently to put an end to the occupation itself.

It is no longer acceptable in this day and age, in the context of what has come to be called the new international order, to speak of international legitimacy; nor is it any longer acceptable at this time for a State to continue to occupy another's territory, whatever the reason, in violation of the rules of international law and the provisions of the Charter of the United Nations.

It is certain, therefore, that what is now required, as a matter of urgency, is to mobilize all international efforts to make Israel withdraw comprehensively from the occupied territories, whether Palestinian, Syrian or Lebanese, and to seek adequate international guarantees to ensure that the peoples of the region are able to live in a climate free of conflict.

The same applies with respect to the special situation of the City of Jerusalem, a Holy City which is the object of the desires of the faithful of the three divine religions.

This Holy City, the city of peace, has throughout its history remained open to all. Consequently, the consideration of its future and the appraisal of its status in accordance with the rules of international law, including, in particular, the conventions according special protection for the Holy Places, and the task of seriously and honestly addressing all the attempts by Israel to alter the geographical and demographic features of the City, are also matters to which the international community is bound to attach all due importance and attention.

In order for that to take place it will be for the international conference on measures to enforce the provisions of the Fourth Geneva Convention of 1949 with respect to the protection of civilians under occupation to take into account the following matters:

First of all, the members of the United Nations as a whole, and above all the United States and Israel, must be reminded of the following governing principles:

1. The four Geneva Conventions are now highly respected worldwide, a fact which calls for full compliance with their provisions. The fact that the number of States party to the Convention exceeds the number of States Members of the United Nations itself provides ample illustration of that fact. According to the Journal of the Red Cross (No. 59/1998), the number of signatory States as at 31 January 1997 was 188, whereas the number of Members of the United Nations was 185.

2. Article 1 of the Convention with which we are dealing, namely the Fourth Geneva Convention, placed a general legal obligation on the States concerned to ensure, by all means, respect for the Convention in all circumstances. By any standards that is an important step towards the development and internationalization of international humanitarian law, so much so that some people have, quite correctly, characterized it as being tantamount to a truly worldwide proclamation of human rights.

3. The thrust of the Convention as a whole is that humanitarian considerations prevail over considerations of military necessity. Consequently, the occupying State cannot invoke security considerations to justify violations of the rights of the people under occupation.

The Convention is not merely a statement of moral principles or of ideal standards of conduct: it is an international instrument that asserts legal rights and obligations.

4. The Convention made it impossible for any Contracting Party to evade responsibility for any infringement of its provisions, in particular the most important ones, which include: coercion, whether physical or moral, collective punishments, forced relocation, corporal punishment and torture.

5. Last but not least, the Convention binds the occupying State to carry out its obligations in accordance with the provisions of part IV of the Convention, including the duty to afford civilians every possible assistance and to enable international organizations, in particular the International Committee of the Red Cross, to carry out their humanitarian functions in the occupied areas.

Secondly, the Conference must end by affirming the following with respect to the enforcement of the provisions of the Convention:

1. The International Committee of the Red Cross must be enabled to carry out its role.

2. Israel must be urged, with all seriousness and sincerity, to give effect to its obligations to publicize the provisions of the Convention and promote awareness of them among individual members of its armed forces. This is, indeed, of the utmost importance because there have been repeated instances of violations, irrefutable evidence of which was the killing of Egyptian prisoners in the 1956 and 1967 wars.

3. The International Criminal Court, the Statute of which was adopted on 17 July 1998 by the Diplomatic Conference in Rome, must be informed.

Under article 5 of the Statute, the crimes within the jurisdiction of the Court are: (a) the crime of genocide; (b) the crime of aggression; (c) serious violations of the laws and customs applicable in armed conflict; (d) crimes against humanity; and (e) crimes specified in the treaties listed which, with respect to the alleged acts, are crimes of exceptional gravity of an international character.

These conventions or treaties are the four Geneva Conventions and their Additional Protocol adopted on 8 June 1977 (article 85).

4. International action must be mobilized against Israel and its constant violations condemned.

5. The occupying Power must be obliged to submit reports concerning the situation of the population in the territories under occupation in a manner similar to what is done in the context of the International Labour Organization.

6. There must be an immediate cessation of the construction of settlements.

7. The role of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories must be reactivated.

8. Sanctions must be imposed on Israel and there must be an end to the policy of double standards.

9. In the medium term, the occupation must be ended by granting self-determination to the Palestinian people; at the same time, the United Nations must assume its role as an international organization and not leave the matter to the United States on the pretext that it is a sponsor of the peace process.

10. There must be a strong commitment to the convening of the international conference in Geneva on 15 July 1999 to examine the enforcement of the provisions of the Convention in the Occupied Palestinian Territory.

H.E. Mr. Akh Morshed
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At the outset, I would like to thank the distinguished Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, Mr. Ibra Deguène Ka; the representative of the host country, H.E. Mr. Said El-Masry, Assistant Foreign Minister; the Honourable Minister for Planning of Palestine, Dr. Nabil Shaath; and the eminent Under-Secretary-General of the United Nations representing the United Nations Secretary-General, Mr. Chinmaya Gharekhan; for affording me this esteemed opportunity to participate in my personal capacity in these deliberations.

Their opening statements and the contribution of the eminent panelists have illuminated the important issues involved and offered good guidance and inspiration. In view of the brilliant and exhaustive presentations that we have been privileged to share, I do not intend to make a full presentation but to offer some tentative submissions on the possible outcome of the upcoming Conference of the High Contracting Parties on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem, scheduled for 15 July 1999 in Geneva.

Although I speak in my personal capacity, I do so in the context of the historic support that the Government and the people of Bangladesh have given to the people of Palestine. What makes my submission to this afternoon's Conference crucially important and timely is the pattern of persistent violations of the Fourth Geneva Convention by Israel and the refusal to acknowledge the legitimate rights of the Palestinian people, both at conventional and customary general international law.

History, and certainly post-Second World War history, offers more than one example of sustained and systematic violations of such a dimension. The occupying Power finds itself in what I believe in modern psychology is called a "state of denial". Continuing denial in this sense poses a unique and insidious challenge not only to the regime of the Fourth Geneva Convention but to the whole peace process and the possibilities of a durable settlement in the Middle East. Confronted with these realities, I believe that the main task of the upcoming Conference is, to quote the United Nations Secretary-General, "upholding the integrity of the Conventions".

It follows that the work of the upcoming Conference will be to reaffirm the significant and salient characteristics of the Fourth Geneva Convention on which there is near universal consensus. These characteristics have been carefully identified and analysed in the past two days.

In this view of the matter, the legal basis of the upcoming Conference may not lie exclusively in the relevant resolutions of the United Nations General Assembly, but may be found in the Convention itself and especially in articles 1 and 148. Under these two articles, the High Contracting Parties, in my view, cannot relieve themselves of the fundamental obligation to consider and draw the legal consequences of a bastion of persistent violations, especially the adoption of policies of colonization and forced demographic transfers.

The first relevant stipulation on which I believe there is a near agreement is characteristic not only of the Fourth Convention but of all the four Geneva Conventions of 14 August 1949. The underlying scheme of these Conventions is the protection of defined classes of persons and certain indefeasible guarantees for their safety, welfare and human rights. As has been highlighted by the luminaries who have preceded me, the decisive element in the application of all the Geneva Conventions, especially the Fourth Geneva Convention, is not the legal status of the territory or the nature of the conflict, but the protection and indefeasible guarantees of the rights of the classes of persons whether they be prisoners of war, the wounded or the sick, or the largest and most vulnerable category, namely, civilians under occupation.

Common article 1 serves to underpin the universal character of its protection: of the protection afforded and the non-permissibility of any deviation from the application of these instruments. The second feature of the Fourth Geneva Convention is that it lies close to the roots of international humanitarian law. This emerges from the nature of the legal issue established thereunder. This Convention, in my humble submission, embodies the boldest and most pervasive issue: protection. I perceive that there is substantial agreement hereon and that the Fourth Geneva Convention and its most important provisions have crystallized into customary international law.

The last relevant characteristic is that some provisions of the Fourth Geneva Convention, for example, article 147 and articles 32 to 56, are, in a purely legal sense, self-fulfilling. A previous speaker called this self-executing, I prefer the word self-fulfilling. In other words, the application of these provisions is not contingent on the enactment of any domestic legislation or any mediatory step by a High Contracting Party. The representative of the Secretary-General of the Arab Lawyers Union, Dr. Sourani, if I am not mistaken, put it very well when he referred to the *ipso facto* nature of these provisions.

Therefore, the possible outcome, and I believe attainable outcome, of the upcoming Conference is the designing of a document that would offer a legally authoritative platform establishing the essential convergence between the Commission and the regime of the Fourth Geneva Convention and recent developments in international humanitarian law, the various human rights instruments, the Statute of the International Criminal Court and above all, convergence with the roles and resolutions of the Security Council and the General Assembly. It would also strengthen the roles of Switzerland as depositary and of the International Committee of the Red Cross as the default of the *de jure* protecting Power.

Upholding the integrity of the Convention implies just such convergence. The upcoming Conference will clearly establish a valuable and creative precedent in an area of international law for the benefit of the protection of civilian persons who, increasingly, are the targets of modern armed conflict and suffer increasingly under the modern means of warfare. Even if the Conference scheduled for 15 July 1999 achieves little, it will have established, if depoliticized, a framework and strictly a framework, for the consideration of this important topic.

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Enforcing the Fourth Geneva Convention: concepts and practicalities

Enforcement, in the sense of a coercive imposition of norms and penalization of violations, is an important but ultimately secondary office of any system of law. It is secondary in character because the question of enforcement can only arise where there has already been failure in the pursuit if the primary purpose of law in maintaining defined normative standards of behaviour in the society to which it is addressed. International humanitarian law is no exception to this. Its primary function is the effective and impartial protection of victims of armed conflict rather than the punishment of war crimes and other violations after they have been committed and there has, *ex hypothesi*, been a serious failure in performance of the protective imperative. In securing effective humanitarian protection, therefore, a primary emphasis must be placed upon dissemination, training and pressure towards positive implementation rather than upon "negative" enforcement after the harm has been done.

This said, international humanitarian law is at least as much subject to violation as any other law and where this happens adequate and effective means of enforcement become vitally important. In this context two distinct categories of violation may be suggested to exist. Although these are not terms of art, they might usefully be described as "particular" and "institutional" violations. The former comprises unlawful acts contrary to the *jus in bello* — primarily in the present context "grave breaches" of the 1949 Geneva Conventions[1] — perpetrated by individuals or groups in the course of armed conflict, including military occupation. The latter would focus upon delinquent States rather than delinquent individuals, subject always to the vital caveat established by the International Military Tribunal at Nuremberg and the International Military Tribunal (Far East) at Tokyo in 1945 that such States are brought to this condition by criminal individuals who may be held personally liable for the consequences of their actions and decisions. Such "institutional" violations would manifestly include the adoption of policies or directions which are inherently criminal in concept or implementation, but might also include a culpable failure to provide possible and appropriate programmes of dissemination and training in humanitarian law leading, often calculatedly, to a culture in which serious violations are routinely committed and encouraged. Such training provision is in fact *required* by the 1949 Geneva Conventions. Article 144 of 1949 Geneva Convention IV provides that:

> "The High Contracting Parties undertake ... to include the study [of the present Convention] ... in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population ..."

It will be noted that while dissemination to the civilian population is to be achieved "if possible", inclusion of this material in courses of military instructions is mandatory. The same provision is made by the other three 1949 Geneva Conventions.[2] The significance of this provision was well indicated by the late Professor-Colonel GIAD Draper in his remark that:

> "At the end of the day, systematic instruction to members of the armed forces, and gradually to the adult population, in the principles of the humanitarian law of armed conflict, as is now required by the Geneva Conventions and Protocol I,[3] may do more to ensure observance of those instruments than the trial and punishment of those who have violated them. Instruction works at a time ahead of violation. Punishment operates when implementation has failed."[4]

Although no charges have ever been brought under these provisions and violation of them are not listed as "grave breaches", it might be argued that any culpable failures in this regard might fall within the jurisdiction of, for example, the Permanent International Criminal Court if it comes into operative being, if their calculated consequence is the commission of grave breaches of the 1949 Geneva Conventions.

Be that as it may, where grave, or other, breaches of the 1949 Geneva Conventions do occur, the question of "enforcement" *stricto sensu* necessarily arises. In considering this issue in relation to the occupied territories, at least four distinct questions arise. These are, firstly, the question of the application of the Fourth Convention, turning upon the interpretation for this purpose of the term "occupation"; secondly, the substance of possible cases to be answered; thirdly, the fundamental questions of jurisdiction, municipal and international; and finally the issue of objectives and possible alternative courses of action.

Application and the question of occupation

Broadly speaking, military occupation has historically been considered a short-term phenomenon occurring during and shortly after actual inter-State hostilities, the permanent status of the affected territory being presumed to be determined by whatever settlement might follow the end of the hostilities. The occupation in question here has undoubtedly been far longer in span than could have been anticipated by those who drafted 1949 Fourth Geneva Convention and this leads to an immediate problem, especially in the reconciliation of articles 2 and 6 of the Convention. Article 2 common to the four 1949 Geneva Conventions provides that:

> "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. ..."

This appears at first sight to be found upon the simple factual criteria of application which are commonly accepted as general in the context of international humanitarian law. Indeed the factual nature of military occupation has been accepted since at least 1907 when the Land Warfare Regulations annexed to 1907 Fourth Hague Convention provided by article 42 that:

> "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."

The requirement is thus simply one of adverse military occupation and governance of a territory formerly lawfully held by another sovereign State or States. This unequivocally is the case so far as the Occupied Palestinian Territory is concerned and the law of occupation is thus *prima facie* applicable.

A significant caveat arises, however, with article 6 of the Fourth Geneva Convention. This provides that:

> "...In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations: however, the occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory by the following articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61-77, 143 ..."

The general one-year limitation refers to the historic perception of occupation as a short-term phenomenon more or less co-terminous with hostilities. In cases such as that of the Palestinian terriotries, which is not in fact unique in post-1945 experience, it is, however, clear that the minimum code represented by the articles listed in article 6 will remain applicable "for the duration of the occupation", however long that may prove to be. This means that the provisions thus listed will be the basis for any enforcement action in relation to the Fourth Geneva Convention in the occupied territories.

Cases to be answered

It is not the purpose of this paper to undertake a detailed review of actual or alleged violations of the Fourth Geneva Convention which have been perpetrated by any participant in the crisis of the occupied territories. Some basic principles do, however, call for comment. In the first place the provisions of the minimum code set out by article 6 of the Fourth Geneva Convention may, loosely and non-technically, be divided into two principal categories which might be termed the "substantive" and the "procedural". Both are important but it is the former which are naturally of primary interest for the time being.

Article 27 of the Convention states that:

> "Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity..."

This may be taken as a general principle which informs the remaining provisions of the "minimum code". It is also emphasized by article 29 that the occupying Power is responsible for the treatment of protected persons in the territory, irrespective of any liability which may be incurred by individuals. The point of this is that a State cannot simply dismiss infractions as the "over-zealous" acts of delinquent operatives, it is the duty of the State to ensure that such infractions do not occur and, if they do, to punish those responsible.

Specific matters which may be noted include the proscription by article 31 of the use of coercion to obtain information from protected persons, the specific ban upon the use of torture set out by article 32 and the ban upon collective punishments and reprisals stated by article 33. In relation to settlement policies, article 49 is of importance in providing that:

> "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive..."

The only exception to this occurs where such movement is made necessary for the safety of the people being moved (i.e. by reference to danger arising from hostilities) or upon the basis of "imperative military reasons" which would again refer to the immediate conduct of hostilities. One of these exceptions would apply in the immediate circumstances under consideration. In relation to the practice of destruction of Palestinian property in the occupied territory it may be noted that article 53 provides that:

> "Any destruction by the occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations is prohibited, except where such destruction is rendered absolutely necessary by miltiary operations."

It will be noted that the prohibition is again absolute except for the application of a caveat referring to circumstances which do not in the present case exist. Finally, the references to penal jurisdiction in occupied territories in articles 64 and following are of considerable significance in relation to the Palestinian territories. Some at least of the concerns raised may be argued even to fall within the category of "grave breaches" of the Fourth Convention as defined by article 147, *inter alia*, to the effect that:

> "Grave breaches ... shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: ... torture or inhuman treatment, ... unlawful deportation or transfer or unlawful confinement of a protected person, ... wilfully depriving a protected person of the rights of fair and regular trial ... and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

An occupying Power has, of course, the right to take action for the maintenance of its own immediate security in an occupied territory, as references to "imperative military reasons" and similar phrases make clear and some criticized Israeli actions might well fall within this caterogy. However, this is not a licence for a general abrogation of the Convention obligations and the permission is in fact strictly limited in scope. That there are *prima facie* grounds for encorcement of the Fourth Convention can hardly be doubted. The fundamental question for this meeting is, evidently, by what means such enforcement action can or should be undertaken.

Enforcement options

Maintenance of the obligations set out by the 1949 Geneva Conventions is a matter of concern for all States Party,[5] which means the overwhelming majority of modern States. Article 1 common to the four Conventions provides expressly that:

> "The High Contracting Parties undertake to respect and *to ensure respect for* the present Convention *in all circumstances*."

The emphases are added. The precise meaning of this might be debated, but it is obviously not an authorization for otherwise unlawful external intervention. It is, however, at the least an imposition of an obligation to use all available good offices to encourage and secure compliance with the Convention obligations by Parties in conflict. It must, however, be emphasized that in all cases of hostile occupation of territory the primary duty of enforcement falls upon the occupying Power itself. Article 146 of the Fourth Convention requires States to enact legislation penalizing the commission of grave breaches as defined in article 147 and also to track down and bring to trial persons suspected of having committed or ordering the commission of such offences, whatever their nationality. States are also required by the article to take measures necessary for the suppression of all breaches of the Convention, whether or not categorized as "grave breaches". Failure to do so would, of course, in itself be a breach of the Convention, albeit not a "grave breach". As it has been suggested above, the most immediate forum for enforcement is thus that of the Israeli judicial system itself. Here, diplomatic pressure has an obvious role to play, not least through the United Nations Organization and through States, such as the United States of America and the States members of the European Union, enjoying friendly relations with Israel. It may indeed be argued that other States have at least an ethical obligation to apply such pressure for compliance. To some degree people in the Palestinian territories do have rights of redress before the Israeli courts, although not in relation, directly or indirectly, to the Fourth Convention, which Israel has refused to admit has *de jure* application there. This is, however, a positive threshold and, as F. Hampson has remarked:

> "The great boast of the Israeli Government is that it is the first occupying Power to give the occupied population the opportunity to challenge the lawfulness of the acts of the occupying forces before its own Supreme Court ... . [T]his points to a way forward in the search for effective enforcement of the provision of the Fourth Geneva Convention."[6]

Of course, a prerequisite for the pursuit of this line is Israeli acceptance of the applicability of the Fourth Convention and here too, diplomatic pressure, especially from friendly Governments and relevant non-governmental organizations, may be seen as the vital component for achievement of the end in view.

A further important possible measure lies in one or another form of international oversight. Article 9 of the Fourth Convention makes provision for the appointment of a Protecting Power to scrutinize the application of the Convention with an obligation for the maximum cooperation of the Power engaged in conflict. In the present case, no Protecting Power has been appointed, nor is it politically very likely that one will be. However, article 10 of the Convention provides further that:

> "The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and their relief."

The International Committee of the Red Cross has in practice been admitted to visit and provide humanitarian oversight and assistance in a number of situations of emergency which States have not considered to be armed conflicts to which the humanitarian treaties apply, as well as doing so in situations of unequivocal armed conflict. This too might be a way forward in securing some level of practical compliance, even if it was admitted technically to be such. Any expanded role for the International Committee of the Red Cross would, however, require Israeli consent, although there is no good reason why such a voluntary acceptance should properly be seen as deleterious from an Israeli viewpoint and in terms of peace- and confidence-building[7] it could indeed be seen as entirely beneficial.

Beyond this, there arises the question of international jurisdiction. Here the prospects cannot be considered especially hopeful. The matters in hand would come within the remit of a Permanent International Criminal Tribunal when and if it actually comes into being. This however remains to be seen and action before such a Tribunal can hardly be considered an immediately likely prospect. There is at present no sitting international Tribunal which could hear criminal cases arising from the occupied territories. Those for former-Yugoslavia and Rwanda are limited in their geographical terms of jurisdiction and whilst they might hypothetically be a model for a Tribunal to consider violations committed by all parties. The political likelihood of such a Tribunal being created through any presently existing political mechanism must, however, be thought vanishingly small.

The possibilities offered by the International Court of Justice are somewhat more interesting, if still very limited. The International Court of Justice has both a contentious and an advisory jurisdiction. Article 36, paragraph 1, of the Court's Statute provides in relation to the contentious jurisdiction that it may hear:

> "...all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties or conventions in force."

In relation to the 1949 Geneva Conventions, resolution 1 of the Geneva Diplomatic Conference of 1949 agreed that:

> "The Conference recommends that, in the case of a dispute relating to the interpretation or application of the present Conventions which cannot be settled by other means, the High Contracting Parties concerned endeavour to agree between themselves to refer such dispute to the International Court of Justice."

This however depends, as in principle does all the contentious jurisdiction of the Court, upon the *agreement* of the Parties to reference to the International Court of Justice and this in the present instance is most unlikely. Israel has indeed specifically stipulated that it will not admit the jurisdiction of the Court in relation to matters pertaining to belligerent occupation. It is true that in some circumstances consent may be implied through a process of *forum prorogatum*, as in the instance of the *Corfu Channel (Preliminary Objections) case*,[8] but this is narrowly construed and could hardly be maintained in the face of an express refusal. The Court is properly reluctant to deem there to be consent when manifestly there is none.

As to the advisory jurisdiction, article 65, paragraph 1, of the Statute of the Court provides that:

> "The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."

Under article 96 of the Charter, such bodies include the General Assembly, the Security Council and such specialized United Nations agencies as may from time to time be so authorized by the General Assembly. In principle therefore an advisory opinion might be sought as to the applicability of the Fourth Convention in the occupied territories which would at least take a step in the direction of possible international enforcement. There would, however, be a number of obstacles in the way of such a process. In the first place the Court has been very reluctant to take on as advisory opinions matters which are in reality contentious cases. The point was made by the Court's League of Nations predecessor, the Permanent Court of International Justice, in the *Eastern Carelia case*,[9] and would be a serious problem in the present instance. It is true that the International Court of Justice has considered highly controversial issues recently by way of advisory opinions, as in the 1996 *Advisory Opinion on the Threat or Use of Nuclear Weapons*, but this was not "contentious" in the same way.

So far as presently available international mechanisms are concerned, therefore, two basic levels of action must seem immediately practicable. The first is that of international diplomatic pressure for municipal application and enforcement by Israel itself. This might take a number of forms in which the United Nations and, within or outside the United Nations, groups of friendly States in particular may play a particular role. There are, in the second place, specific pressures which might be applied, including the possible impact of a permanent international criminal tribunal and, less likely in the light of the veto power in the Security Council, the imposition of economic sanctions and/or the creation of a specific tribunal. These are the actually and hypothetically available "negative" pressures. There may also, however, be a positive pressure to be applied.

A possible alternative approach

The best means of securing the primary endeavour of the Fourth Convention is, paradoxically, to ensure that it is not applicable. That is to say by ending the situation of occupation through the establishment of a just and stable peace. This is something that all people of good will both in and beyond the region must regard as both the immediate and the ultimate goal. Many people have striven for nearly half a century to achieve this goal without success, the territories remain occupied and people continue to suffer — this is in nobody's interest, neither Israeli nor Palestinian. The change of Government in Israel in 1999 suggests, however, that a fresh approach may now urge the peace process forward to the great benefit of all. An issue as demonstrably intractable as the establishment of a stable and sustainable Middle Eastern security order cannot be addressed as an appendix to a short paper upon enforcement of the Fourth Convention, but one thought is perhaps worthy of tentative flotation. The situation out of which post-apartheid South Africa emerged is not of course a direct parallel with that here under consideration, but the mechanism of the Truth and Reconciliation Commission in South Africa may nonetheless have some useful parallels to offer. A process of peace and confidence-building must inevitably be a basic part of any final resolution of the crisis and a mechanism of peace and reconciliation not, as in South Africa, as a post-settlement mechanism but as part of the settlement process might have some potential as a means of both assuaging the injury done by violations of the Fourth Convention, by Israel and by others, and an earnest of the cessation of such violations. The thought is tentative and the means may not be available, but the idea is at least worthy of contemplation as an addition to the armoury of implementation/enforcement.

Conclusions

It is suggested that the applicability of the Fourth Geneva Convention, at least in the sense of the minimum code set out by article 6 must, for the Occupied Palestinian Territory, be considered to be unequivocably established. A prerequisite for progress is to bring Israel to accept this as a matter both *de jure* and *de facto*. The most immediately obvious way of doing this is through diplomatic pressure both on the part of the United Nations in general and through the medium of friendly States in particular, in which respect both the United States of America and the European Union may have particular roles to play. This approach would have at least two dimensions. Much the most important is that of securing future compliance, until such time as the Middle Eastern security crisis and with it the question of the status of the occupied territories is satisfactorily resolved. This is the dimension of *implementation* rather than *enforcement* as such. As it has been suggested above an "informal" involvement on the part of the International Committee of the Red Cross might also have a valuable role to play in this regard. Diplomatic pressure also plays its role in a potentially successful strategy of enforcement *stricto sensu*. The obligation of Israel itself to enforce the provisions of the Convention is clearly established and this may also be a requisite of an effective peace process. International adjudication is in the current circumstances a rather uncertain possibility. For reasons explained above, an advisory opinion of the International Court of Justice is unlikely and a contentious decision virtually out of the question. The possibility of hearings into the violations committed by more than one party before an ultimate permanent international criminal tribunal cannot be ruled out but must, like the tribunal itself, remain for the time being more hypothesis than fact.

Whether a "special" tribunal might be set up with a general remit for legal violations in relation to the situation of the Palestinian territories may be debated, there is no legal reason why this should not be done, and indeed a number of jurisprudential reasons why such a move might be desirable. The political practicality is more open to debate. The answer is then perhaps more political than strictly legal, but this is anyway surely the case. The working of international law, which is in many ways the most formal normative expression of accepted international relations, has an inescapably "political element" and the best way of ensuring compliance is the creation and maintenance of a situation in which non-compliance is not an acceptable or viable option. In this light also the real way forward for both the Palestinian and the Israeli peoples lies in a secure and lasting peace settlement both in the specific area and in the larger regional context. The current question of "occupation" is an important but ultimately derivative element of this greater is [illegible] and any reasonable approach to it must embody the ultimate greater aim of the establishment of a stable order in which Israel and its neighbours will be able to enjoy "normal" international relations.

Notes

[1] For further consideration of the definition of grave breaches and war crimes, see below.

[2] Convention I, article 47; Convention II, article 48; Convention III, article 127.

[3] 1977 Additional Protocol I, article 83.

[4] GIAD Draper, "The Implementation of the Geneva Convention of 1949 and the Additional Protocols of 1977", a lecture given at the Hague Academy of International Law in 1979 and published in the *Recueil des Cours*, vol. 164, pp. 9-30; extracted in M.A. Meyer and H. McCoubrey eds., *Reflections on Law and Armed Conflicts: The Selected Works on the Laws of War by the late Professor-Colonel GIAD Draper, OBE* (Kluwer Law International, 1998), p. 102 at p. 110.

[5] It may here be noted that the vast bulk of the substantive provision of the Conventions are considered to have the status of customary law.

[6] F. Hampson, "Promoting the Enforcement of International Law: The Provision of Effective Remedies" in *Towards a Strategy for the Enforcement of Human Rights in the Isreli Occupied West Bank and Gaza: A Working Symposium, London 25 July 1989* (Labour Middle East Council and Conservative Middle East Council, 1989), p. 89 at p. 91.

[7] For further comment on this see below.

[8] ICJ Reps (1948), 15.

[9] PCIJ Reps, Series B, No. 5 (1923).

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The application of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (the Fourth Geneva Convention)[1] to the Palestinian territories occupied by Israel, including Jerusalem, has been recognized in resolutions of the General Assembly,[2] the Commission on Human Rights,[3] the Subcommission on Prevention of Discrimination and Protection of Minorities[4] and the Security Council.[5] Only Israel, it seems, contests the role of the Convention, which applies, at least in part, to protect civilians in the occupied territory of a Party to the instrument even after the armed conflict is over and as long as the occupation continues.[6] Of particular importance is article 49, paragraph 6, which forbids the occupying State to transfer "parts of its own civilian population into the territory it occupies".[7] Article 33 prohibits the imposition of collective penalties and "all measures of intimidation" on persons protected by the Convention. Article 64 provides that penal law of the occupied territory is to remain in force, and that its tribunals are to continue to function, subject only to those which may constitute a threat to the security of the occupying State.

The Fourth Geneva Convention has achieved near-universal ratification, and most of its provisions can be considered to codify customary norms. Since the Convention was adopted in 1949, the law concerning protection of civilians, including those in occupied territories, has continued to evolve. Several important provisions in Additional Protocol I of 1977 strengthen the norms set out in the Conventions.[8] Furthermore, the Rome Statute of the

International Criminal Court, adopted on 17 July 1998, defines as a war crime "[t]he transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory".[9] Nevertheless, while Israel has been a party to the Fourth Convention since 6 July 1951, it has not signed or ratified Additional Protocol I and it voted against the Rome Statute, stating specifically that the drafters had gone beyond the customary enumeration of war crimes by including the issue of transfer of populations to occupied territories.

Article 1 common to the four Geneva Conventions requires the High Contracting Parties to "respect and ensure respect" of the norms therein. It is an enigmatic provision; there is little in the Convention itself or in its *travaux préparatoires* to explain what "ensure respect" may mean.[10] The International Court of Justice, in the Nicaragua case, described article 1 as a "general principle [. . .] of humanitarian law to which the Conventions merely give specific expression".[11] According to the commentaries on the Convention, prepared under the direction of Jean Pictet:

> "The Contracting Parties do not undertake merely to respect the Convention, but also to 'ensure respect' for it. The wording may seem redundant. When a State contracts an engagement, the engagement extends *eo ipso* to all those over whom it has authority, as well as to the representatives of its authority; and it is under an obligation to issue the necessary orders. The use in all four Conventions of the words 'and to ensure respect for' was, however, deliberate: they were intended to emphasize the responsibility of the Contracting Parties. Article 29 expressly states, moreover, that the Party to the conflict is responsible for the treatment accorded to protected persons. It would not, for example, be enough for a State to give orders or directions to a few civilian or military authorities, leaving it to them to arrange as they pleased for their detailed execution. It is for the State to supervise the execution of the orders it gives. Furthermore, if it is to fulfil the solemn undertaking it has given, the State must of necessity prepare in advance, that is to say in peacetime, the legal, material or other means of ensuring the faithful enforcement of the Convention when the occasion arises. It follows, therefore, that in the event of a Power failing to fulfil its obligations, the other Contracting Parties (neutral, allied or enemy) may, and should, endeavour to bring it back to an attitude of respect for the Convention. The proper working of the system of protection provided by the Convention demands in fact that the Contracting Parties should not be content merely to apply its provisions themselves, but should do everything in their power to ensure that the humanitarian principles underlying the Conventions are applied universally."[12]

In an innovative 1990 resolution, the Security Council called upon "the High Contracting Parties to the Fourth Geneva Convention of 1949 to ensure respect by Israel, the occupying Power, for its obligations under the Convention in accordance with article 1 thereof".[13] The General Assembly has done the same, "[c]all[ing] upon States parties to the Convention, in accordance with article 1 common to the four Geneva Conventions, to exert all efforts in order to ensure respect for its provisions by Israel".[14] These appeals from principal organs of the United Nations reinforce the duty of States parties to the Fourth Convention to ensure its respect, but the obligation exists *de plein droit* in any case. Nevertheless, in envisaging the convening of a conference of the High Contracting Parties on measures to be taken to ensure respect for the Convention, in accordance with article 1, the Security Council and the General Assembly stress the collective dimension of the obligation to "ensure respect".[15]

The Convention establishes a hierarchy of violations by creating the category of "grave breaches", which are enumerated in article 147.[16] The real significance of the grave breaches classification is that it indicates obligations to investigate, prosecute and extradite individual offenders.[17] In terms of State responsibility under the Convention, the distinction is of rather less significance.[18] From the State responsibility standpoint, although some breaches may seem in an objective sense to be more serious than others, they are all violations of the Convention and therefore in conflict with binding obligations to which Israel is subject. More recently, a second category of breach of the Convention has been defined, that of "serious violations", although it is not recognized in the instrument itself. The concept of "serious violations" enlarges the scope of individual criminal responsibility from the rather limited list in the grave breaches provision.[19] The Rome Statute attempted a codification of "serious violations" of the Geneva conventions in article 8, paragraph 2 (b). Again, the purpose of the distinction is to establish individual criminal responsibility.

It would be a waste of time and energy for the conference of the High Contracting Parties to devote much time to defining and describing the violations of the Geneva Convention as such. Not only is there virtual consensus as to the application of the Fourth Geneva Convention to the occupied territories, there is little doubt about the nature of the violations themselves. Moreover, the legal debate about the application of the Convention and the nature of the violations seems to be of little real importance, given that Israel appears to recognize the application of the norms set out in the Convention as being applicable as a question of customary international law. This must be coupled with the International Court of Justice's recognition of article 1 as a general principle of law, applicable even without a conventional obligation. The issue might be of greater importance were there indications about implementation mechanisms or jurisdictional provisions within the Convention. But this is the chapter that has yet to be written. The conference of the High Contracting Parties represents an exciting opportunity to advance the effectiveness of the Convention and, in so doing, to promote the cause of international humanitarian law.

Measures of enforcement

Umesh Palwankar has classified the available measures of enforcement of the Geneva Conventions into four categories: measures to exert diplomatic pressure, including protest and public denunciation; coercive measures taken by States themselves, including retortion and reprisals; unarmed reprisal such as forms of economic pressure, restrictions on trade and investment; and measures in cooperation with international organizations. But although ideally the principal organs of the United Nations will take up the issue, there are obvious problems. Little should be expected from the Security Council because of the United States' veto. The General Assembly may authorize and recommend countermeasures, but its decisions lack real binding force. It already did so in 1982 when it recommended, at its ninth special session on the situation in the occupied territories, that Israel be subjected to suspension of economic, financial and, technological assistance and cooperation, severing of diplomatic, trade and cultural relations so as to isolate it totally in all fields.[20]

In a more general sense, article 1 common to the Geneva Conventions has often been cited as one of the normative sources to justify humanitarian intervention, together with such similar provisions as article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide.

The meeting of experts convened by Switzerland in October 1998 identified some measures or tools aimed at improving respect for the Convention. Nevertheless, the results were rather tame. Proposals included encouraging accession or ratification of other humanitarian instruments, the organization of meetings of concerned States to deal with specific situations to discuss concrete measures, and the convening of the conference of States Parties.

The United Nations African Meeting in Support of the Inalienable Rights of the Palestinian People, held in Windhoek on 22 April 1999, issued a declaration calling on "all Governments, organizations, and individuals, as well as the international business community to refrain from rendering any form of financial, technical or other assistance to Israel that could be utilized towards its settlement activities".[21]

A preparatory meeting of non-governmental organizations, held in Geneva on 7 April 1999, convened by the Palestinian Centre for Human Rights, adopted a position paper proposing more aggressive and affirmative steps to enforce the Convention. At the top of the list was individual criminal accountability for grave breaches of the Convention. The position paper notes that High Contracting Parties are under a legal obligation, pursuant to article 146 of the Convention, to search for persons alleged to have committed grave breaches and to bring them to trial. The position paper also cites the decision of the European Commission recommending that its member States not import goods produced in the Israeli settlements.

According to Amnesty International, in a letter sent to Governments on 11 May 1999 urging their support for the July Conference, Israel is responsible for a variety of grave breaches of the Convention, including extrajudicial executions, killings and woundings, systematic torture during interrogation, unfair trials based on confessions extracted under duress and administrative detention without trial.[22]

The possibility of prosecution for grave breaches raises intriguing issues of international law, and ought to be viewed with interest given the renewed commitment to accountability for major international crimes. This is exemplified in such developments as the adoption of the Rome Statute and the prosecution of Augusto Pinochet.[23] Article 146 of the Fourth Convention recognizes the legal principle *aut dedere aut judicare* (try or extradite) and implicitly authorizes the exercise of universal jurisdiction,[24] a concept, it should be recalled, that received its most significant judicial affirmation in litigation involving Israel's right to prosecute war criminals.[25] This means that High Contracting Parties to the Fourth Convention are under an obligation to prosecute those suspected of committing grave breaches in the occupied territories. Exercising jurisdiction may be difficult to the extent the suspects remain within Israel, although arguably States Parties are required by the Convention to seek extradition of those whom Israel refuses to try. If the result of threats of prosecution under article 146 is only to restrain the travel plans of Israeli civilian and military officials, this may still constitute a useful means of pressure. But whatever its effectiveness, it is a requirement under the Convention.

Possible outcomes

The convening of a Conference of High Contracting Parties is an unprecedented step, not only within the context of the Palestinian question but as a matter of international humanitarian law as a whole. Aside from the very general statement in article 1, the Convention is itself silent on such issues as enforcement and dispute settlement. Switzerland, the depositary of the Convention,[26] has been called upon by the General Assembly to organize the conference. However, Switzerland has frequently declared its reluctance to do so failing consensus on the subject. If the word "consensus" means the agreement of the United States Government, Switzerland has established a very high and perhaps impossible standard. At the resumed tenth special session of the General Assembly, in February 1999, Switzerland deplored the lack of consensus and said it could not play an active role in convening the Conference unless States Parties first defined procedures for handling grave violations.[27] Switzerland has already furnished its own original interpretation on the mandates it has been given in previous General Assembly resolutions, for example, by convening expert bodies and then limiting their attendance to the parties most directly concerned. Switzerland's obvious discomfort with the process and its past performance in this area add an unpredictable dimension to possible outcomes of the Conference of the High Contracting Parties.

The legitimacy and even the legality of the Conference has been called into question by the United States of America. It argues that there is no provision for such a gathering in the Convention and no competent authority to convene it.[28] Article 7 of Protocol I provides that the depositary shall convene a meeting of the High Contracting Parties, at the request of one or more of the Parties and upon the approval of the majority of the Parties, "to consider general problems concerning the application of the Conventions and of the Protocol".[29] A broader provision was rejected by the 1974-1977 diplomatic conference. Although the general spirit of article 7 is clearly respected in the convening of the 15 July 1999 meeting, it cannot properly be said that the meeting is being held pursuant to article 7. Be that as it may, it must be borne in mind that the concept of a conference of High Contracting Parties to deal with violations of the Convention in the occupied territories has been endorsed in a Security Council resolution that requested the Secretary-General "in cooperation with the International Committee of the Red Cross, to develop further the idea...of convening a meeting of the High Contracting Parties to the Convention to discuss possible measures that might be taken by them under the Convention".[30] Because of the veto it enjoys, the complicity of the United States in all Security Council resolutions should be assumed. In any case, with such a static view, international law would never advance. This recalls the position taken by the United States with respect to the jurisdictional provisions of the Rome Statute. Essentially the United States argues that because something has not been done before it cannot be done in the future. Yet the absence of earlier precedent has never stood in the way of the United States when its policy called for innovative measures, as the creation of the ad hoc tribunals by the Security Council in 1993 and 1994 or for that matter the bombing of Yugoslavia in 1999 clearly demonstrates. The threat by the United States not to attend the Conference of High Contracting Parties creates an additional source of uncertainty as to possible outcomes.

Nevertheless, there are ample precedents in recent years for new diplomatic initiatives that in effect by-pass the United States. The Rome Conference of June-July 1998 fulfilled its goals, in spite of attempts by the United States to weaken the Statute and its well-publicized opposition at the time of adoption. A year earlier, the Land Mines Convention was adopted at Ottawa without participation by the United States. In fact, its promised absence at the 15 July Conference of High Contracting Parties will make consensus on meaningful measures easier. It will be argued, however, that this may undermine some of the legitimacy of the gathering and that it will compromise its effectiveness.

To the extent that the powers of such a conference are contested, there exist useful measures that clearly find their source in the Convention itself end that can be implemented even in a somewhat piecemeal fashion. Individual prosecution, for example, is dictated by article 146 and can be developed by one or a handful of States with a dynamic approach to prosecution for international crimes, as Spain has so clearly demonstrated in the past year. The inexorable consequence, however, is the involvement of a growing web of international undertakings, nourished by the work of civil society, which is now firmly committed to individual accountability for war crimes and human rights abuses. The United Kingdom of Great Britain and Northern Ireland did not choose to prosecute Augusto Pinochet, but once Spain had launched the case the English judiciary and administration were dragged into it, many of them quite reluctantly. Similar scenarios can be anticipated should prosecution for grave breaches committed in the occupied territories be taken with the seriousness that this deserves.

The level of engagement will depend on the resolve in Geneva in July, something that can be redefined even in the weeks and days that precede the gathering by political developments within the Israeli Government and the Palestinian Authority.[31] Participants will have the entire panoply of the diplomatic toolbox from which to choose, ranging from a modest "presidential statement" to more robust techniques such as resolutions and final acts. One useful area of reflection as the Conference preparations are being made would be whether it should be constituted on an ongoing basis, somewhat like the Conference on Security and Cooperation in Europe. In other words, once it is convened, it can take on a life of its own, a useful technique to ensure follow-up, to maintain diplomatic and political pressure, and to encourage further strengthening of the undertakings that may result from the July meeting.

The convening of the Conference is not without danger. A failure to act effectively will strike a blow at the Convention norms and at the entire scheme of international humanitarian law. The Security Council and General Assembly have presented the High Contracting Parties with a challenge that they must meet with distinction. In the Bosnian application against Yugoslavia before the International Court of Justice, ad hoc Judge Elihu Lauterpacht considered the scope of the obligation to prevent genocide, a concept that is in many ways analogous with the duty to ensure respect set out in common article 1. Judge Lauterpacht observed that "[t]he limited reaction of the parties to the Genocide Convention" in the fact of evident breaches as "a practice suggesting the permissibility of inactivity".[32] The July conference of High Contracting Parties will send a message as to the comfort level of States with violations, including grave breaches, of the Fourth Geneva Convention. Failure to act vigorously may ricochet in unexpected ways and on unexpected situations. Therefore, if States truly believe that there is an obligation in a general sense to ensure respect of the Fourth Geneva Convention not just within their own borders but when it is being violated elsewhere, the Conference of High Contracting Parties is a major test of their resolve and commitment.

Notes

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[1] (1950) 75 United Nations T.S. 287.

[2] "Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including Jerusalem, and other occupied Arab territories", General Assembly res. 52/65; "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including Jerusalem", General Assembly res. 52/67, para. 1.

[3] "Question of the violation of human rights in the occupied Arab territories, including Palestine", C.H.R. res. 1999/5, para. 5; "Israeli settlements in the occupied Arab Territories", C.H.R. res. 1999/7, para. 2 (a).

[4] "Situation in the Palestinian and other Arab territories occupied by Israel", S.-C.H.R. 1996/6, para. 2.

[5] S.C. res. 681 (1990). Also: S.C. res. 904 (1994).

[6] *Supra* note 1, art. 6, para. 3.

[7] See John Quigley, "The Israel-PLO Agreements versus the Geneva Civilians Convention", (1992) 7 *Palestine Y.B. Int'l L.* 45.

[8] *Protocol Additional to the 1949 Geneva Conventions of 12 August 1949, and Relating to The Protection of Victims of International Armed Conflicts (Protocol 1)*, (1979) *1125* United Nations T.S. 3, arts. 48-79.

[9] "Rome Statute of the International Criminal Court", UN. Doc. A/CONF.183/9, (1998) 37 I.L.M. 999, art. 8(2)(b)(viii).

[10] See: Luigi Condorelli, Laurence Boisson de Chazournes, "Quelques remarques à propos de l'obligation des États de 'respecter et faire respecter' le droit international humanitaire 'en toutes circonstances'", in Christophe Swinarsici, *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet*, Geneva: International Committee of the Red Cross; The Hague: Martinus Nijhoff, 1984, pp. 17-36, esp. pp. 26-29; Nicolas Levrat, "Les conséquences de l'engagement pris par les Hautes Parties contractantes de 'faire respecter' les Conventions humanitaires", in Frits Kalshoven, ves Sandoz, eds., *Implementation of International Humanitarian Law*, Dordrecht/Boston/London: Martinus Nijhoff, 1989, pp. 263-296.

[11] *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.) (Merits)*, 1986 I.C.J. Reports 14, para. 220.

[12] Oscar M. Uhler, Henri Coursier et al., *Commentary IV, Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 1958, p. 16.

[13] S.C. res. 681 (1990), para. 5.

[14] "Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including Jerusalem, and other occupied Arab territories", General Assembly res. 51/132, para. 3.

[15] "Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory", General Assembly res. ES-10/6, para. 6; "Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory", General Assembly res. ES-10/5, para. 3; "Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory", General Assembly res. ES-10/4, para. 4; "Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory", General Assembly res. ES-10/3, para. 10.

[16] "Grave breaches… shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

[17] *Supra* note 1, art. 146.

[18] Subject to the controversial view that States themselves may commit international crimes. See the recent debate on this issue in the International Law Commission: "Report of the International Law Commission on the work of its fiftieth session, 20 April-12 June 1998, 27 July-14 August 1998", United Nations doc. A/53/10 and Corr.1.

[19] *Prosecutor* v. *Tadic* (Case no. IT-94-1-AR72), Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Oct. 2, 1995, (1997) 105 I.L.R. 453, 35 I.L.M, 32, para. 91. See: José Alvarez, "Nuremberg Revisited: The Tadic Case," (1996) 7 *Eur. J. Int'l L.* 245; José Alvarez, "Rush to Closure: Lessons of the Tadic Case"; (1997) 3 *ILSA J. Int'l & Comp. L.* 613; Aaron K. Baltes, "Prosecutor v. Tadic: Legitimizing the establishment of the International Criminal Tribunal for the former Yugoslavia," (1997) 49 *Me. L.Rev.*577; Dorothea Beane,"After the Dusko Tadic war crimes trial: A commentary on the applicability of the grave breaches provisions of the 1949 Geneva Conventions," (1997) 27 *Stetson L. Rev.* 589; Raymond M. Brown, "A Fronte Praecipitiuma Tergo Lupi: Towards an Assessment of the Trial of Dusko Tadic Before the ICTY", (1997) 3 *ILSA J. Int'l & Comp. L.* 597; Christopher Greenwood,"International Humanitarian Law and the Tadic Case," (1996) 7 *Eur. J. Int'l L.* 265; L.G. Maresca, "The Prosecutor v. Tadic - The Appellate Decision of the International Criminal Tribunal for Yugoslavia and Internal Violations of Humanitarian Law as International Crimes," (1996) 9 *Leiden J. Int'l L.* 219; Peter Rowe, "The International Criminal Tribunal for Yugoslavia: The Decision of the Appeals Chamber on the Interlocutory Appeal on Jurisdiction in the Tadic Case," (1996) 45 *I.C.L.Q.* 691; Marco Sassoli, "La Première Décision de la Chambre d'appel du Tribunal Pénal International pour l'ex-Yougoslavie: Tadic (Compétence)", (1996) 100 *R.G.D.I.P.* l01; Michael P. Scharf, *"The Prosecutor v. Dusko Tadic:* An Appraisal of the First International War Crimes Trial Since Nuremberg", (1997) 60 *Albany L. Rev.* 861; Zaid, Mark S., "Trial of the Century? Assessing the Case of Dusko Taic Before the International Criminal Tribunal for the Former", (1997) 3 *I.L.S.A. J. Int'l & Comp. L.* 589.

[20] General Assembly res. ES-9/1.

[21] "United Nations African Meeting in Support of Palestinian Rights Concludes in Namibia; adopts Windhoek Declarations", PAL/1873.

[22] "Amnesty International Calls on High Contracting Parties to Take Measures to Ensure Israelis Respect for the Fourth Geneva Convention", Public Statement, AI Index: MDE 15/37/99.

[23] *R.* v. *Bartle, ex parse Pinochet*, Divisional Court, Queen's Bench Division, Oct. 28, 1998, (1998) 37 I.L.M. 1302; *R. v. Bow Street Stipendiary Magistrate and others, ex parte Pinochet Ugarte*, [1998] 4 All E.R 897, [1998] 3 W.L.R 1456 (H.L.); *R. v. Bow Street Stipendiary Magistrate and others, ex parte Pinochet Ugarte (Amnesty International and others intervening) (No. 3)*, [1999] 2 All E.R 97, [1999] 2 W.L.R 825 (H.L.).

[24] Christine Van den Wyngaert, "War Crimes, Genocide and Crimes Against Humanity-Are States Taking National Prosecutions Seriously?", in M. Cherif Bassiouni, *ed., International Criminal Law, Vol. III, Enforcement*, 2nd ed., Ardsley, New York: Transnational Publishers, 1999, pp. 227-238.

[25] *A.-G. Israel* v. *Eichmann*, (1968) 36 I.L.R 5 (District Court, Jerusalem), paras. 20-25; *A.-G. Israel* v. *Eichmann*, (1968) 36 I.L.R 277 (Israel Supreme Court), para.12. Also: *In the Matter of the Extradition of John Demjanjuk*, 612 F.Supp. *544* (D.C. Ohio 1985), pp. 554-558.

[26] According to article 76, paragraph 2, of the Vienna Convention on the Law of Treaties, "[t]he functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance".

[27] Press Release GA/9544, Feb. 9, 1999. Convening of such a conference is not one of the functions of a depositary, according to article 77 of the Vienna Convention. However, the depositary is also expected to fulfil other functions "agreed by the contracting States".

[28] For a somewhat conservative view of the scope of such a conference, see: Hans-Peter Gasser, "Ensuring Respect for the Geneva Conventions and Protocols: The Role of Third States and the United Nations", in Hazel Fox, Michael A. Meyer, *Effecting Compliance*, London: British Institute of International and Comparative Law, 1993, pp. 15-49, at p. 43.

[29] *Supra* note 8.

[30] S.C. res. 681(1990).

[31] See, for example, John Quigley, "The Role of Law in a Palestinian-Israeli Accommodation", (1999) 31 *Case Western Reserve J. Int'l L.* (forthcoming).

[32] *Application of the Convention on the prevention and punishment of the crime of genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro)), Further requests for the Indication of Provisional Measures*, 13 September 1993, [1993] I.C.J. Reports 325, p. 445.

VI. CLOSING SESSION

H.E. Mr. Sayd El-Masry
Assistant Foreign Minister for Multilateral Affairs
of the Arab Republic of Egypt,
representative of the host country

I spoke to you yesterday to welcome you to this important meeting of the Committee on behalf of the host State, and I am pleased to be speaking to you again today, at the conclusion of the work of the meeting, to congratulate you on the success achieved.

The interest shown in participating in the meeting, and the discussions and the outcome of the meeting, have reflected the continuing overwhelming international support for the inalienable rights of the Palestinian people, as well as the continuing conviction of the necessity of convening the Conference of High Contracting Parties to the Fourth Geneva Convention in order to examine measures for the enforcement of the Convention in the Occupied Palestinian Territory, including Jerusalem. It has also reflected an increasing commitment to convening the Conference in Geneva in the middle of next month in accordance with the resolution adopted last February by the tenth emergency special session of the General Assembly.

Moreover, we have all followed the fruitful and constructive debate at this important meeting among the speakers, who included governmental and international representatives, representatives of civil society, human rights organizations, research centres and those involved in various ways with the issues before us.

The discussions emphasized the threat posed by Israel's settlement activities to the peace process, and the applicability of the provisions of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem, and called on Israel to desist from violating the provisions of the Fourth Geneva Convention particularly with respect to the construction and expansion of settlements, and to the action by Israel against the original Palestinian population by altering the geographical and demographic character of the occupied territories in flagrant violation of Israel's obligations under the Convention as the occupying Power.

The discussions at the meeting, both today and yesterday, made clear the strong support for the timely convening of the Geneva Conference next month so as to achieve a substantive and balanced outcome in keeping with the obligation of the High Contracting Parties to respect and ensure respect for the Convention in accordance with article 1 common to the four Geneva Conventions.

With respect to the substantive outcome of the Geneva Conference, it is worth dwelling on the overall thrust of the meeting, which was that the outcome should raise the provisions of the Convention, and of international humanitarian law, far above confrontation, politicization or futile vituperation.

That is in keeping with the overall tendency of the Group of Arab States, supported by the Movement of Non-Aligned Countries, in New York and Geneva during the difficult consultations accompanying the negotiations on the resolutions of the tenth emergency special session of the General Assembly, and the current negotiations concerning arrangements for convening the Conference.

The meeting of the Committee in Cairo has given a new momentum to the international efforts in support of the convening of the Conference next month in Geneva. I share the hopes of all of you that that effort will send a clear message emphasizing the danger of the Israeli settlements for the peace process in the Middle East, which we hope will proceed in a favourable and serious climate that will put right its failings, give it a new lease of life and extricate it from its current deadlock.

Once again, I extend my congratulations to the Chairman and members of the Committee, and to all of you, for a successful and useful meeting; I am confident that, in its report to the General Assembly at its forthcoming session, the Committee will reflect the discussions at the meeting and the trends that emerged.

H. E. Mr. M. Nasser Al-Kidwa
Permanent Observer of Palestine to the United Nations,
New York

Allow me to begin by expressing our deep thanks and appreciation to Egypt, to the people of Egypt and to the Government of Egypt for hosting this International Meeting and for its continuous unlimited support for the cause of Palestine. Allow me also to express our thanks to the members of the Committee on the Exercise of the Inalienable Rights of the Palestinian People and specifically to you, Mr. Chairman, for your tireless efforts, again, in support and in solidarity with the struggle of the Palestinian people. I would not miss also to express our thanks and appreciation to the distinguished panelists and to all the participants in this important International Meeting.

Today, Mr. Chairman, I will try to make some quick, concise comments which I hope will reflect the Palestinian position with regard to some specific issues, including some issues of a technical nature related to the Conference.

Firstly, what we see as the unique nature of Israel's belligerent occupation of the Occupied Palestinian Territory, including Jerusalem: the Israeli occupation of the Palestinian territory, including Jerusalem and the policies and practices of the occupying Power in this regard represent a unique case for several reasons other than the duration of the occupation. Primarily, the occupation is unique because of the multiplicity and intensity of Israel's grave breaches, breaches and violations of the Fourth Geneva Convention and other acts contrary to its provisions, all of which have led to untoward suffering by the Palestinian civilian population.

Secondly, those grave breaches and other acts have continued for a long period of time, almost 32 years, in total contradiction of the position of the international community and in blatant violation of many Security Council and other United Nations resolutions.

Lastly, the Israeli occupation is unique because it is effectively transforming the situation in the Occupied Palestinian Territory from one of "normal occupation", if there is anything like normal occupation, to one of actual colonization of the Palestinian land and denying the legitimate national rights of a whole people at the end of the twentieth century, a time when the phenomenon of colonization have long been deceased in other parts of the world. This situation and accompanying culture of impunity must be brought to an immediate end. The Israeli oppressive measures must cease immediately and the measures of colonization must also be stopped and reversed with all the correlating practical and legal ramifications.

That is why we need the Conference of 15 July and, indeed, we need it badly and urgently, and that is why we believe the Conference must take place.

The nature of General Assembly resolutions which recommended the convening of the Conference: I would like to underline the fact that we are talking here about General Assembly resolutions which differ from the resolutions of the usual General Assembly sessions. These are resolutions adopted by the emergency special session, to be specific, the tenth emergency special session, under the known formula "uniting for peace", during which the membership of the United Nations, because of the failure of the Security Council to carry out its responsibilities in maintaining international peace and security, decided to shoulder this responsibility directly. I would add to that the fact that for two times, the consultations conducted by the Swiss Government, in its capacity as the depositary of the Convention, clearly showed that the broad majority of the High Contracting Parties indeed agreed to convene the Conference and agreed to convene the Conference on time, on 15 July.

With regard to the timing of the Conference, we believe that the issue of the timing of the Conference is a done matter. We believe that proposals to postpone it practically mean to end the whole exercise. We believe that this should not be subject to discussion. Not only because of its devastating effect on the Palestinian situation, but also because of a very dangerous effect on the Conventions themselves. Thus, on the Palestinian side there is no flexibility with regard to the principle and the timing of the convening of the Conference. There is, nevertheless, all kind of flexibility with regard to the results and the outcome of the Conference, something which will be subject to the political developments on the ground.

Let me refer to the previous commitment made by some parties in this regard, that is, the convening of the Conference. And here, I know that what I am going to say might not make me popular with some friends, particularly among the non-governmental organizations, but nevertheless, it is a fact that during the negotiations on General Assembly resolution ES-10/6, there have been commitments made by the parties.

For instance, there was a commitment not to politicize the Conference nor to politicize international humanitarian law. There was commitment not to seek the adoption of condemnation of legal or political evaluations; not to propose unrealistic ideas such as the establishment of sanction regimes or the establishment of a special court. I am, of course, making unrealistic demands: I am not saying unjust ideas because, in my opinion, these are very just and needed measures. However, in real life, in the present circumstances, they are probably not realistic ones. There was a commitment not to allow the result of the Israeli elections affect the timing of the Conference. The Arab side wanted to convene this Conference in April and wanted that badly. Some important players wanted the Conference to convene after the Israeli elections with the clear commitment that their result was not going to affect the agreed compromise, which is 15 July. On our side, we remain committed to the commitments we made and we hope that the other players who were parties to these agreements will do the same.

The issue of the rules of procedure for the Conference: we believe that there must be rules of procedure to organize the Conference. We further believe that the absence of such rules of procedure or as an alternative, the agreement on a general form of conducting the work such as "no vote, no veto", is not enough and most probably will affect the legal nature of the Conference and lead to practical problems and difficulties. Again, we think that there must be rules of procedure. We do not attach great importance to their nature, to their extent, or who is going to propose them; nevertheless, they must be there.

The way to deal with the substantial issues: we note that there has been some insistence to deal with the substantial issues in the framework of a group of friends created by the Government of Switzerland in Geneva. We also noted realistically that many of our colleagues in Geneva are inclined to accept something like that. We are ready to go along with something of this sort. However, we believe that another look must be taken at the group of friends, especially in view of the fact that there is no legal mandate given to this group by anyone, including by the General Assembly, and the fact that some of its members have already declared that they are not going to attend the Conference. We cannot see why they would be able to participate. The alternative, in our opinion, is bilateral and multilateral discussions among political groups such as the Arab group, the Movement of Non-Aligned Countries, the European Union in addition to the depositary and the parties to the conflict. For us, it is indeed unacceptable to get into serious discussion of substance without the effective participation of Palestine. Furthermore, we believe that under all circumstances, the Coordinating Bureau of the Movement of Non-Aligned Countries should remain engaged and we believe that the Bureau can and will play a constructive role in this regard.

Lastly, let me try to deal with the results of the Conference as we see it in Palestine. Without prejudice, of course, to the specific outcome of the Conference, which should be decided by all the participants in the Conference, and I stress, all the participants in the Conference, we think that the outcome of the Conference should be in the form of a declaration and resolution that could be adopted in accordance with the Conference rules of procedure.

We think that the declaration which will deal with the more general nature of matters could include the following elements: the importance of international humanitarian law; the importance of the protection of civilians in armed conflict; concern over the underlying gap between the rules of international humanitarian law and their application; the universality of the Fourth Geneva Convention and the fact that it has acquired the status of international customary law; affirmation of the *de jure* applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including Jerusalem, and the affirmation of the applicability of Additional Protocol 1 and The Hague Regulations; the validity of the applicability of the Convention is not affected by the existence or lack thereof of local law; the existence of grave breaches and serious violations by Israel of the Fourth Geneva Convention; affirmation of the inviolability of the rights of protected persons; and finally, affirmation of the obligations of the High Contracting Parties to ensure respect for the Conventions in accordance with common article 1.

Elements which could be included in the resolution, of course of more pertinence to the Palestinian situation, could include affirmation of the applicability of the Convention; a breakdown of the Israeli grave breaches and serious violations of the Convention along the line of the classification provided in the Chairman's report on the experts meeting which took place last October in Geneva; an expression of special concern for the transfer of Israeli civilians to the Occupied Palestinian Territory, including Jerusalem; recommendation to the High Contracting Parties to take measures they deem appropriate at the national and regional levels to ensure respect for the Convention; and finally, the establishment of a committee to follow up on the results which could be headed by the depositary, with the participation of the International Committee of the Red Cross.

This International Meeting in Cairo has contributed substantially and very effectively to the ongoing efforts to convene the Conference on 15 July and to ensure a successful outcome of that Conference. I believe that its usefulness will be further underlined through the adoption of the final document of the Conference.

Before I conclude, let me again thank the host country; the Secretary-General of the United Nations and his representative; I would also like to thank the colleagues of the Committee and all the participants in the Meeting.

Finally, let me express our confidence that the 15 July Conference will be a success not only for the Palestinian side but also for the whole of humanity.

H.E. Mr. Ibra Deguène Ka

Chairman of the Committee on the Exercise
of the Inalienable Rights of the Palestinian People

As we are concluding this Meeting today, I would like to emphasize how honoured my colleagues in the Committee delegation and myself are to have been able to hold this important international event here in Cairo, the capital of a country that has contributed and continues to contribute so much to the cause of achieving a comprehensive, just and lasting solution of the Arab-Israeli conflict.

By convening this Meeting, our Committee continues to pursue its mandate aimed at raising international awareness of the various aspects of the question of Palestine and at mobilizing action by the international community in that regard. The Committee supported the recommendation by the tenth emergency special session of the General Assembly to the High Contracting Parties to the Fourth Geneva Convention to convene a conference on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem. The Committee also welcomes the efforts by Switzerland, as the depositary of the Geneva Conventions, to convene the Conference on 15 July at Geneva. The Committee was gratified by the action of Governments and intergovernmental organizations on this issue. The convening of this Meeting has proved to be very timely, given that, in a month's time, the High Contracting Parties will gather for the first time since the signing of the Convention to consider a specific situation.

This Meeting assembled internationally renowned experts in international humanitarian law together with representatives of Governments and intergovernmental and non-governmental organizations to exchange views and ideas regarding the forthcoming conference in Geneva. During the two days of deliberations, we have listened to most interesting presentations by the distinguished panellists, we witnessed lively discussions, noted different views and have had the great pleasure of meeting many participants personally. The Committee delegation is very pleased that this event generated so much interest. We consider it a promising sign of preparedness of the international community to uphold the principles of international humanitarian law in the Occupied Palestinian Territory, including Jerusalem.

The participants in the Meeting were unanimous in their view that, regardless of positive developments or setbacks in the peace process, the Palestinian people, during the past 32 years of illegal Israeli occupation, had been subjected to continued violations of its basic human rights and wilful breaches of international humanitarian law by Israel, the occupying Power. We took note with serious concern of numerous and persistent violations, by Israel, of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, including the unlawful use of deadly force, torture, deportations, destruction of property and the various forms of collective punishment.

The participants expressed their utmost concern at the continuing illegal land confiscation and settlement activity in the Occupied Palestinian Territory, including Jerusalem, in clear violation of article 49 of the Fourth Geneva Convention. This policy is also effectively putting the peace process on hold. It was also emphasized that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purported to alter the character, legal status and demographic composition of occupied East Jerusalem and the rest of the occupied territory, were null and void. The participants demanded the immediate and full cessation of the construction at Jabal Abu Ghneim, Ras al-Amud and of all other Israeli settlement activities, as well as of all illegal measures and actions in occupied East Jerusalem. Participants called upon the international community to stop all forms of assistance to and support for illegal Israeli activities in the Occupied Palestinian Territory, including Jerusalem, in particular settlement activities, and to discourage activities that directly contribute to any construction or development of those settlements.

The participants supported the convening of the Conference of the High Contracting Parties to the Fourth Geneva Convention and appealed to the respective Governments to fulfil their own responsibilities under the Convention. They emphasized the importance of article 1 of the Convention, which requires the High Contracting Parties to respect and to ensure respect for the Convention in all circumstances. They drew particular attention to article 146 of the Convention, stating that the High Contracting Parties undertook to seek out and prosecute persons accused of being involved in the perpetration of grave breaches. Other possible measures to enforce the Convention include the appointment of a Protecting Power (article 9), conciliation (article 12) and the inquiry procedure (article 149).

The participants drew attention to the fact that the mechanisms of the Convention itself, which was designed to be enforced by a system of Protecting Powers and formally appointed substitutes, had never been implemented. However, in accordance with the Convention, the High Contracting Parties could nominate either an intergovernmental or a non-governmental organization to monitor the situation in the territory under occupation. They suggested that the High Contracting Parties to the Convention should utilize their consular presence more fully and effectively for monitoring purposes. A United Nations monitoring mechanism could be established through which the High Contracting Parties would carry out their responsibilities under article 1 of the Convention. The participants expressed their deep appreciation for the efforts of the International Committee of the Red Cross at upholding the Convention and called upon Israel to cooperate with it.

The participants further recommended that the international non-governmental organizations community should support activities directed at ensuring compliance with the Convention by expanding its efforts at public education, advocacy and direct involvement to provide protection. Such efforts could include non-governmental organizations actions to promote concrete international measures aimed at ending unlawful policies and practices, and to provide civilian volunteer observers and monitors who could, by their very presence, provide a certain measure of protection.

The Security Council and the General Assembly have maintained since the war of 1967 that the territories that came under the control of Israel during the 1967 war were "occupied territories" within the meaning of the Fourth Geneva Convention. Both the Security Council and the General Assembly have also stated in numerous resolutions that the Convention applied to these territories. This essentially means that, in spite of Israel's refusal to accept the *de jure* applicability of the Fourth Geneva Convention, the international community is of the view that it must be applied.

The application of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem, is, above all, the obligation of the Israeli Government. The participants have repeatedly expressed the hope that the change of Government in Israel would also bring about a change in its policies towards the Palestinians. On behalf of the Committee, I would like to call upon the new Israeli Government to restore trust, confidence and hope in the peace process. An important step in that direction would be to recognize the *de jure* applicability of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem, and to uphold its provisions. This would require an immediate halt of all settlement activities and a cessation of all other illegal practices covered under the Convention. The new Israeli Government should realize that its country is in default with regard to its obligations under international law and take the necessary action to rectify the situation. It would be highly significant if Israel, High Contracting Party to the Convention since 1951, and one of the parties concerned, would participate in the forthcoming Geneva Conference and work together with the other High Contracting Parties towards a solution of the issues at hand. I would also like to express the hope of the Committee that all other High Contracting Parties to the Convention live up to their responsibilities and participate actively in the Conference.

As repeatedly reaffirmed by the General Assembly, the United Nations has a permanent responsibility with respect to the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy. Our Committee considers that, in the period ahead, it is of great importance for the United Nations to continue and to maintain its responsibility for involvement in this question, through a variety of means available to it. As the organ of the General Assembly dealing with this question since 1976, the Committee will continue to monitor the situation on the ground in order to bring new developments affecting Palestinian rights to the attention of the international community, and to mobilize international public opinion and action in support of the Palestinian people, as well as for concrete assistance to meet its present and future needs.

The deliberations of the past two days have brought about numerous interesting ideas with respect to the application of the Fourth Geneva Convention. I am confident that they will be useful and will be further studied by the Governments of the High Contracting Parties ahead of the Geneva Conference.

Before concluding, I would like, on behalf of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, to thank once again all the participants — Governments, intergovernmental and non-governmental organizations, distinguished experts and special guests — for their contribution to our deliberations, for their interest in this issue and for their support for the upholding of international legitimacy.

Allow me to thank once again the Government of Egypt for having agreed to host this important International Meeting. It is already the fourth time that a meeting on the question of Palestine, organized under the auspices of our Committee, is being held in Cairo. On behalf of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, I would like to express our utmost appreciation to the Government and people of Egypt for their continued support of the just cause of the Palestinian people.

Our special thanks go to the distinguished experts. Their insights into the problem, be it from the legal, academic or political perspective, have contributed to bringing the issues at stake to the attention of all the participants in this Meeting and beyond. The papers presented by the experts contributed to a better understanding of international humanitarian law and the many valuable ideas expressed by all the participants constitute, without any doubt, an important source to further enhance international humanitarian law.

On behalf of the Committee, I should also like to express once again our gratitude to the Secretary-General of the United Nations and his representative, to the staff of the Division for Palestinian Rights, to all the staff of the United Nations Secretariat, the United Nations Development Programme and the United Nations Information Centre, Cairo. We also wish to thank the interpreters and translators and all those who, by working behind the scenes in a discreet and efficient manner, provided us with valuable assistance. And, of course, we are very grateful to the management of the hotel for their customary hospitality, attention to our needs and support.

I declare closed the United Nations International Meeting on the Convening of the Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem.

VII. FINAL DOCUMENT

1. The United Nations International Meeting on the Convening of the Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem, was held in Cairo on 14 and 15 June 1999, under the auspices of the Committee on the Exercise of the Inalienable Rights of the Palestinian People. Participants in the Meeting included international legal experts as well as representatives of Governments, intergovernmental organizations, United Nations system organizations and agencies, the representative of the International Committee of the Red Cross, the Palestinian Authority, non-governmental organizations and representatives of the media. The Secretary-General of the United Nations sent an official message to the Meeting.

2. The participants emphasized the importance of upholding and enforcing the purposes and principles of the Charter of the United Nations, international humanitarian law and human rights law. Participants stressed the universal character of the Geneva Conventions and the fact that their provisions have been accepted as norms of international customary law. They recalled that 1999 marked the fiftieth anniversary of the signing of the four Geneva Conventions and the centenary of the First Hague Peace Conference. It was, therefore, opportune for the international community to renew its determination to promote international humanitarian law further and to ensure the respect for the Geneva Conventions. The participants also referred to the adoption in Rome in 1998 of the Statute of the International Criminal Court.

3. The participants in the Meeting were unanimous in their view that the Palestinian people was subjected to flagrant violations of its basic human rights, as well as their rights as protected persons under Israeli occupation. They expressed serious concern with regard to grave breaches, breaches and violations, by Israel, the occupying Power, of the Fourth Geneva Convention, including arbitrary detention, ill-treatment of and violence against civilian population, torture, summary execution, confiscation and destruction of property, forcible transfers and deportations, and the various forms of collective punishment, as well as the destruction of economic and social structures of the Occupied Territory. The participants noted that the above violations correspond to all the categories of problems that are contained in the Chairman's report of the Experts' Meeting of October 1998.

4. The participants expressed their utmost concern at the continuing settlement activities, which include illegal land confiscations, transfer of Israeli civilians to the Occupied Palestinian Territory, including Jerusalem, in clear violation of article 49 of the Fourth Geneva Convention. Article 49 states that the occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies. This policy, aimed at expansion and annexation apart from being illegal, was deemed to be detrimental to the peace process.

5. The participants reaffirmed the existing international consensus on the *de jure* applicability of the Fourth Geneva Convention to the Occupied PalestinianTerritory, including Jerusalem, in accordance with relevant General Assembly and Security Council resolutions. They also called upon Israel, the occupying Power, to comply fully with the provisions of the Convention. Furthermore, the participants recalled that the Fourth Geneva Convention, as an instrument of international humanitarian law, was applicable, regardless of the national legislation of Israel, which is a High Contracting Party to the Convention.

6. The participants appealed to all the High Contracting Parties to the Fourth Geneva Convention to fulfil their obligations in accordance with common article 1, which requires the High Contracting Parties to respect and to ensure respect for the Convention in all circumstances.

7. The participants strongly supported the convening of the conference on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, as recommended in General Assembly resolutions ES-10/3, 4 and 5. They also strongly supported the convening by the High Contracting Parties of the said conference on 15 July 1999 at the United Nations Office at Geneva in accordance with General Assembly resolution ES-10/6,

adopted overwhelmingly on 9 February 1999. The report of the Secretary-General of 14 October 1997 demonstrated clearly that the majority of the High Contracting Parties were in favour of the convening of a conference and recent consultations conducted by the depositary also showed that the broad majority supports the convening of the conference on 15 July 1999. The participants called upon all the High Contracting Parties to participate actively in the conference.

8. The participants welcomed the consultations taking place on the preparations for the conference, including those conducted by Switzerland in its capacity as the depositary, and emphasized the need for the widest possible participation in those consultations.

9. The participants called upon the High Contracting Parties to strive for concrete results by the conference to be incorporated in a declaration or a resolution or both. In view of the significance of the matter, they urged the High Contracting Parties to make every effort to reach consensus in the conference and, in the absence of that, they expressed the hope that the decisions would be adopted by a vast majority.

10. The conference should emphasize the responsibility of the High Contracting Parties to ensure respect for the Convention. It should reaffirm, *inter alia*, the *de jure* applicability of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem, and, in view of the various Israeli violations of the provisions of the Convention, in particular its illegal settlement policy, call upon the High Contracting Parties to live up to their obligations under the Convention.

11. The participants expressed their hope that the High Contracting Parties would be in a position to take, individually or collectively, the measures they deem appropriate to ensure respect of the Convention.

12. The participants called upon the High Contracting Parties participating in the conference to establish a follow-up mechanism. This could take the form of a committee, possibly under the leadership of the depositary of the Fourth Geneva Convention, with the participation of the International Committee of the Red Cross, to ensure the full application of the Convention. The parties directly concerned should be part of that committee and the High Contracting Parties may demand their full cooperation.

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Switzerland	H.E. Mr. Blaise Godet, Ambassador to Egypt Mrs. Caroline Trautweiler, Attaché

Other organizations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and maintaining permanent observer missions at Headquarters

Palestine	H.E. Mr. Nabil Shaath, Minister for Planning and International Cooperation, Palestinian Authority, Representative of Palestine H.E. Mr. Zuhdi Qasem Al-Kedra, Ambassador to Egypt H.E. Mr. Mohd Subaih, Ambassador of Palestine to the League of Arab States Mr. Firas El-Masri, Head of Political Department, Embassy to Egypt

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Mr. Chinmaya Gharekhan	Under-Secretary-General, United Nations Special Coordinator in the Occupied Territories

Delegation of the Committee on the Exercise of the Inalienable Rights of the Palestinian Peoples

H.E. Mr. Ibra Deguène Ka	Permanent Representative of Senegal to the United Nations, Chairman of the Committee
H.E. Dr. Ravan A.G. Farhâdi	Permanent Representative of Afghanistan to the United Nations, Vice-Chairman of the Committee
H.E. Mr. George Saliba	Permanent Representative of Malta to the United Nations, Rapporteur of the Committee
H.E. Mr. Moctar Ouane	Permanent Representative of Mali to the United Nations
H.E. Mr. Nasser Al-Kidwa	Permanent Observer of Palestine to the United Nations

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United Nations Centre for Human Settlements (Habitat)	Mr. Mohamed El Sioufi, Human Settlement Advisor
United Nations Environmental Programme	Mr. Hahmood Abdalraheem, Regional Director for ROWA
United Nations High Commissioner for Refugees	Mr. Mohamed Boukry, Regional Representative for the Middle East, Cairo
International Labour Organization	Mr. Ahmed Tawfik
Food and Agriculture Organization of the United Nations	Mr. Nadir Doumanji
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International Monetary Fund	Mr. Mauro Mecagni, Resident Representative, Cairo
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Other entities having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and maintaining permanent offices at headquarters

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